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Statesman Edition Vol. III

Charles Sumner

HIS COMPLETE WORKS

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With Introduction

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BE TRUE TO THE DECLARATION OF INDEPENDENCE.

Letter to a Public Meeting in Ohio, on the Anniversary of the Ordinance of Freedom, July 6, 1849.

BE TRUE TO THE DECLARATION OF INDEPENDENCE.

Letter to a Public Meeting in Ohio, on the Anniversary of the Ordinance of Freedom, July 6, 1849.

Boston, July 6, 1849.

GENTLEMEN, — I wish I could join the freemen of the Reserve in celebrating the anniversary of the great Ordinance of Freedom; but engagements detain me at home.

The occasion, the place of meeting, the assembly, will all speak with animating voices. May God speed the work!

Let us all strive, with united power, to extend the beneficent Ordinance over the territories of our country. So doing, we must take from its original authors something of their devotion to its great conservative truth.

The National Government has been for a long time controlled by Slavery. It must be emancipated immediately. Ours be the duty, worthy of freemen, to place the Government under the auspices of Freedom, that it may be true to the Declaration of Independence and to the spirit of the Fathers!

In this work, welcome to honest, earnest men, of *all parties* and *all places!* Welcome to the efforts of Benton in Missouri, and of Clay in Kentucky! Above all, welcome to the united regenerated Democracy of the

North, which spurns the mockery of a Republic, with professions of Freedom on the lips, while the chains of Slavery clank in the Capitol!

Faithfully yours,

CHARLES SUMNER.

Messrs. JOHN C. VAUGHAN,
THOMAS BROWN, } *Committee.*

WHERE LIBERTY IS, THERE IS MY PARTY.

SPEECH ON CALLING THE FREE-SOIL STATE CONVENTION TO ORDER, AT WORCESTER, SEPTEMBER 12, 1849.

THE Annual State Convention of the Free-Soil Party, called at the time the Free Democracy, met at Worcester, September 12, 1849. It became the duty of Mr. Sumner, as Chairman of the State Central Committee, to call the Convention to order. In doing this he made the following remarks.

FELLOW-CITIZENS OF THE CONVENTION: —

IN behalf of the State Central Committee of the Free Democracy of Massachusetts, it is my duty to call this body to order.

I do not know that it is my privilege, at this stage of your proceedings, to add one other word to the words of form I have already pronounced; but I cannot look at this large and generous assembly without uttering from my heart one salutation of welcome and encouragement. From widely scattered homes you have come to bear testimony once more in that great cause containing country with all its truest welfare and honor, and also the highest aspirations of our souls. Others may prefer the old combinations of party, stitched together by devices of expediency only. You have chosen the better part, in coming to this alliance of principle.

In the labors before you there will be, I doubt not, that concord which becomes earnest men, devoted to

a good work. We all have but one object in view,— the success of our cause. Turning neither to the right nor to the left, moving ever onward, we adopt into our ranks all who adopt our principles. These we offer freely to all who will come and take them. These we can communicate to others without losing them ourselves. These are gifts which, without parting with, we can yet bestow, as from the burning candle other candles may be lighted without diminishing the original flame.

It was the sentiment of Benjamin Franklin, that apostle of Freedom, uttered during the trials of the Revolution, "Where Liberty is, there is my country." I doubt not that each of you will be ready to respond, in similar strain, "Where Liberty is, there is my party."

It now remains, Gentlemen of the Convention, that I should call upon you to proceed with the business of the day.

THE FREE-SOIL PARTY EXPLAINED AND VINDICATED.

ADDRESS TO THE PEOPLE OF MASSACHUSETTS, REPORTED TO AND ADOPTED BY THE FREE-SOIL STATE CONVENTION AT WORCESTER, SEPTEMBER 12, 1849.

THE State Convention of the Free-Soil party at Worcester, 12th September, was organized with the following officers: Hon. William Jackson, of Newton, President; Bradford Sumner, of Boston, Daniel E. Potter, of Salem, C. L. Knapp, of Lowell, J. T. Buckingham, of Cambridge, John Milton Earle, of Worcester, D. S. Jones, of Greenfield, Edward F. Ensign, of Sheffield, Benjamin V. French, of Braintree, Gershom B. Weston, of Duxbury, and Job Coleman, of Nantucket, Vice-Presidents; William F. Channing, of Boston, Samuel Fowler, of Westfield, Noah Kimball, of Grafton, A. A. Leach, of Taunton, Secretaries.

On motion of Mr. Sumner, a committee of one from each county was appointed to report an Address and Resolutions, consisting of Charles Sumner, of Boston, John A. Bolles, of Woburn, J. G. Whittier, of Amesbury, John M. Earle, of Worcester, Melvin Copeland, of Chester, Erastus Hopkins, of Northampton, D. W. Alvord, of Greenfield, F. M. Lowrey, of Lee, F. W. Bird, of Walpole, Jesse Perkins, of Bridgewater, Joseph Brownell, of New Bedford, Nathaniel Hinckley, of Barnstable, and E. W. Gardner, of Nantucket.

In the course of the proceedings, speeches were made by Anson Burlingame, Esq., Hon. Charles F. Adams, Hon. Charles Allen, Hon. Edward L. Keyes, and James A. Briggs, Esq., of Ohio. From the committee of which he was chairman Mr. Sumner reported an Address to the People of Massachusetts, explaining and vindicating the Free-Soil movement, with a series of Resolutions, all of which were unanimously adopted by the Convention. Of this Address, which became the authorized declaration of the party, the *Daily Republican* remarked: "The Address, prepared by that gifted scholar and writer, Charles Sumner, is an elaborate, complete, and unanswerable vindication of the principles embodied in the Resolutions. Clear, logical, and triumphant in argu-

ment, it glows with the warm and genial spirit of love for humanity which distinguishes all the productions of its author."

Among the Resolutions was the following, which seems the prelude to the debates of twenty years later.

"*Resolved*, That we adopt, as the only safe and stable basis of our State, as well as our National policy, the great principles of Equal Rights for All, guarantied and secured by Equal Laws."

TO THE PEOPLE OF MASSACHUSETTS.

FELLOW-CITIZENS, — Another year has gone round, and you are once more called to bear testimony at the polls to those truths which you deem vital in the government of the country. By votes you are to declare not merely predilections for men, but devotion to principles. Men are erring and mortal; principles are steadfast and immortal.

If the occasion is calculated less than a Presidential contest to arouse ardors of opposition, it is also less calculated to stimulate animosities. With less passion, the people are more under the influence of reason. Truth may be heard over the prejudices of party. Candor, kindly feeling, and conscientious thought may take the place of embittered, unreasoning antagonism, or of timid, unprincipled compliance. If the controversy is without heat, there may be no viper to come forth and fasten upon the hand.

Though of less apparent consequence in immediate results, the election now approaching is nevertheless of great importance. We do not choose a President of the United States, or Members of Congress, but a Governor, Lieutenant-Governor, and other State officers. Still, the same question which entered into the election of National officers arises now. The Great Issue which has already convulsed the whole country presents itself

anew in a local sphere. Omnipresent wherever any political election occurs, it will never cease to challenge attention, until at least two things are accomplished: *first*, the divorce of the National Government from all support or sanction of Slavery, — and, *secondly*, the conversion of this Government, within its constitutional limits, to the cause of Freedom, so that it shall become Freedom's open, active, and perpetual ally.

Impressed by the magnitude of these interests, devoted to the triumph of the righteous cause, solicitous for the national welfare, animated by the example of the fathers, and desirous of breathing their spirit into our Government, the Free Democracy of Massachusetts, in Convention assembled at Worcester, now address their fellow-citizens throughout the Commonwealth. Imperfectly, according to the necessity of the occasion, earnestly, according to the fulness of their convictions, hopefully, according to the confidence of their aspirations, they proceed to unfold the reasons of their appeal. They now ask your attention. They trust to secure your votes.

Our Party a permanent National Party. — We make our appeal as a *National* party, established to promote principles of paramount importance to the country. In assuming our place as a distinct party, we simply give form and direction, in harmony with the usage and the genius of popular governments, to a movement which stirs the whole country, and does not find an adequate and constant organ in either of the other existing parties. In France, under the royalty of Louis Philippe, the faithful friends of the yet unborn Republic formed a band together, and by publications, speeches, and votes

sought to influence the public mind. Few at first in numbers, they became strong by united political action. In England, the most brilliant popular triumph in her history, the repeal of the monopoly of the Corn Laws, was finally carried by means of a newly formed, but wide-spread, political organization, which combined men of all the old parties, Whigs, Tories, and Radicals, and recognized opposition to the Corn Laws as a special test. In the spirit of these examples, the friends of Freedom have come together, in well-compacted ranks, to uphold their cherished principles, and by combined efforts, according to the course of parties, to urge them upon the Government, and upon the country.

All the old organizations contribute to our number, and good citizens come to us who have not heretofore mingled in the contests of party. Here are men from the ancient Democracy, believing that any democracy must be a name only, no better than sounding brass or a tinkling cymbal, which does not recognize on every occasion the supremacy of Human Rights, and is not ready to do and to suffer in their behalf. Here also are men who have come out of the Whig party, weary of its many professions and its little performance, and especially revolting at its recent sinister course with regard to Freedom, believing that in any devotion to Human Rights they cannot err. Here also, in solid legion, is the well-tried band of the Liberty Party, to whom belongs the praise of first placing Freedom under the guardianship of a special political organization, whose exclusive test was opposition to Slavery.

Associating and harmonizing from opposite quarters to promote a common cause, we learn to forget former differences, and to appreciate the motives of each other,

— also how trivial are the matters on which we disagree, compared with the Great Issue on which we all agree. Old prejudices vanish. Even the rancors of political antagonism are changed and dissolved, as in a potent alembic, while the natural irresistible affinities of Freedom prevail. In our union we cease to wear the badge of either of the old organizations. We have become a party distinct, independent, permanent, under the name of the Free Democracy, thus in our very designation expressing devotion to Human Rights, and especially to Human Freedom.

Professing honestly the same sentiments, wherever we exist, in all parts of the country, East and West, North and South, we are truly a NATIONAL party. We are not compelled to assume one face at the South and another at the North, — to blow hot in one place, and blow cold in another, — to speak loudly of Freedom in one region, and vindicate Slavery in another — in short, to present a combination where the two extreme wings profess opinions, on the Great Issue before the country, diametrically opposed to each other. We are the same everywhere. And the reason is, because our party, unlike the other parties, is bound together in support of fixed and well-defined principles. It is not a combination fired by partisan zeal, and kept together, as with mechanical force, by considerations of political expediency only, — but a sincere, conscientious, inflexible union for the sake of Freedom.

Old Issues obsolete. — Taking position as an independent party, we are cheered not only by the grandeur of our cause, but by favorable omens in the existing condition of parties. Devotion to Freedom impels us;

Providence itself seems to open the path for our triumphant efforts. Old questions which have divided the minds of men have lost their importance. One by one they have disappeared from the political field, leaving it free to a question more transcendent far. The Bank, the Sub-Treasury, the Public Lands, are all obsolete issues. Even the Tariff is not a question where opposite political parties take opposite sides. The opinions of Mr. Clay and Mr. Polk, as expressed in 1844, when they were rival candidates for the Presidency, are so nearly identical, that it is difficult to distinguish between them.

CLAY.

"Let the amount which is requisite for an economical administration of the government, when we are not engaged in war, be raised exclusively on foreign imports; and in adjusting a tariff for that purpose, let such discriminations be made as will foster and encourage our own domestic industry. All parties ought to be satisfied with a tariff for revenue and discriminations for protection." — *Speech at Raleigh, April* 13, *in the National Intelligencer of June* 29, 1844.

POLK.

"I am in favor of a tariff for revenue, such a one as will yield a sufficient amount to the treasury to defray the expenses of the government, economically administered. In adjusting the details of a revenue tariff, I have heretofore sanctioned such moderate discriminating duties as would produce the amount of revenue needed, and at the same time afford reasonable incidental protection to our home industry. I am opposed to a tariff for protection merely, and not for revenue." — *Letter to John K. Kane, June* 19, 1844.

Friends and enemies of the Tariff are to be found, more or less, in both the old organizations. From opposite quarters we are admonished that it is not a proper question for the strife of party. Mr. Webster, from the Whigs, and Mr. Robert J. Walker, from the Democrats, both plead for its withdrawal from the list

of political issues, that the industry of the country may not be entangled in constantly recurring contests. And why have they thus far pleaded in vain? It is feared no better reason can be given than that certain political leaders wish to use the Tariff as a battle-horse by which to rally their followers in desperate warfare for office. The debt entailed by the Mexican War comes to aid the admonitions of wisdom, and to disappoint the plots of partisans, by imposing upon the country the necessity for such large taxation as to make the protection thus incidentally afforded satisfactory to judicious minds.

The Great Issue. — And now, instead of these superseded questions, connected for the most part only with the material interests of the country, and, though not unimportant in their time, all having the odor of the dollar, you are called to consider a cause connected with all that is divine in Religion, pure in Morals, and truly practical in Politics. Unlike the other questions, it is not temporary or local in character. It belongs to all times and to all countries. It is part of the great movement under whose strong pulsations all Christendom now shakes from side to side. It is a cause which, though long kept in check throughout our country, as also in Europe, now confronts the people and their rulers, demanding to be heard. It can no longer be avoided or silenced. To every man in the land it now says, with clear, penetrating voice, "Are you for Freedom, or are you for Slavery?" And every man in the land must answer this question, when he votes.

The devices of party can no longer stave it off. The subterfuges of the politician cannot escape it. The tricks of the office-seeker cannot dodge it. Wherever

an election occurs, there this question will arise. Wherever men assemble to speak of public affairs, there again it will be. In the city and in the village, in the field and in the workshop, everywhere will this question be sounded in the ears: "Are you for Freedom, or are you for Slavery?"

The Anti-Slavery Sentiments of the Founders of the Republic. — A plain recital of facts will show the urgency of this question. At the period of the Declaration of Independence there were upwards of half a million colored persons held as slaves in the United States. These unhappy people were originally stolen from Africa, or were the children of those stolen, and, though distributed through the whole country, were to be found mostly in the Southern States. But the spirit of Freedom was then abroad in the land. The fathers of the Republic, leaders in the War of Independence, were struck with the impious inconsistency of an appeal for their own liberties, while holding fellow-men in bondage. Out of ample illustrations, I select one which specially reveals this conviction, and possesses a local interest in this community. It is a deed of manumission, made after our struggles had begun, and preserved in the Probate Records of the County of Suffolk.[1] Here it is.

"Know all men by these presents, that I, JONATHAN JACKSON, of Newburyport, in the County of Essex, gentleman, *in consideration of the impropriety I feel, and have long felt, in holding any person in constant bondage, more especially at a time when my country is so warmly contending for the liberty*

[1] Printed, since this Address, in the History of Newton, by Francis Jackson, (Boston, 1854,) p. 336.

every man ought to enjoy, and having sometime since promised my negro man, Pomp, that I would give him his freedom, and in further consideration of five shillings paid me by said Pomp, I do hereby liberate, manumit, and set him free ; and I do hereby remise and release unto said Pomp all demands of whatever nature I have against Pomp. In witness whereof I have hereunto set my hand and seal, this 19th of June, 1776.

"Jonathan Jackson. [Seal.]

"*Witness*, Mary Coburn,
"William Noyes."

The same conviction animated the hearts of the people, whether at the North or South. In a town-meeting at Danbury, Connecticut, held on the 12th of December, 1774, the following declaration was made.

"It is with singular pleasure we note the second article of the Association, in which it is agreed to import no more negro slaves, — as we cannot but think it a palpable absurdity so loudly to complain of attempts to enslave *us*, while we are actually enslaving *others*."[1]

The South responded in similar strain. At a meeting in Darien, Georgia, January 12th, 1775, the following important resolution speaks, in tones worthy of freemen, the sentiments of the time.

"We, therefore, the Representatives of the extensive District of Darien, in the Colony of Georgia, being now assembled in Congress, by the authority and free choice of the inhabitants of the said District, now freed from their fetters, do

Resolve, ... To show the world that we are not influenced by any contracted or interested motives, but a general philanthropy for all mankind, of whatever climate, language, or complexion, *we hereby declare our disapprobation*

[1] American Archives, 4th Series, Vol. I. col. 1038.

and abhorrence of the unnatural practice of Slavery in America, (however the uncultivated state of our country, *or other specious arguments, may plead for it*,) a practice founded in injustice and cruelty, and highly dangerous to our liberties, (as well as lives,) debasing part of our fellow-creatures below men, and corrupting the virtue and morals of the rest, and is laying the basis of that liberty we contend for (and which we pray the Almighty to continue to the latest posterity) upon a very wrong foundation. We therefore resolve at all times to use our utmost endeavors for the manumission of our slaves in this Colony, upon the most safe and equitable footing for the masters and themselves."[1]

Would that such a voice were heard once again from Georgia!

The soul of Virginia, at this period, found eloquent utterance through Jefferson, who, by precocious and immortal words, enrolled himself among the earliest Abolitionists of the country. In a paper presented to the Virginia Convention of 1774, in reference to the grievances by which the Colonies were then agitated, he openly avowed, while vindicating American rights, that "the abolition of domestic slavery is the greatest object of desire in those Colonies, *where it was unhappily introduced in their infant state.*"[2] And then again in the Declaration of Independence he embodied sentiments, which, when practically applied, will give freedom to every slave throughout the land. "We hold these truths to be self-evident," said the country, speaking by his voice: "that all men are created equal; that they are endowed by their Creator with certain

[1] American Archives, 4th Series, Vol. I. coll. 1135, 1136.

[2] A Summary View of the Rights of British America: American Archives, 4th Series, Vol. I. col. 696. Memoir, Correspondence, and Miscellanies of Jefferson, Vol. I. p. 111; Writings, Vol. I. p. 135.

unalienable rights; that among these are life, *liberty*, and the pursuit of happiness." And again, in the Congress of the Confederation, he brought forward, as early as 1784, a resolution to exclude Slavery from all the territory "ceded or *to be ceded*" by the States to the Federal Government, and including the territory now covered by Tennessee, Mississippi, and Alabama. Lost at first by the failure of the two-thirds vote required, this measure was substantially renewed at a subsequent day by a son of Massachusetts, and in 1787 was finally confirmed, in the Ordinance of the Northwestern Territory, by a unanimous vote of the States, with only a single dissentient among the delegates.

Thus early and distinctly do we discern the Anti-slavery character of the founders, and their determination to place the National Government openly, actively, and perpetually on the side of Freedom.

The National Constitution was adopted in 1788. And here we discern the same spirit. Express provision was made for the abolition of the slave-trade. The discreditable words *Slave* and *Slavery* were not allowed to find place in the instrument, while a clause was subsequently added, by way of amendment, and therefore, according to received rules of interpretation, specially revealing the sentiments of the founders, which is calculated, like the Declaration of Independence, if practically applied, to carry freedom everywhere within the sphere of its influence. It was specifically declared, that "no person shall be deprived of life, *liberty*, or property, without due process of law."

From a perusal of the debates on the National Constitution, it is evident that Slavery, like the Slave-trade, was regarded as temporary; and it seems to have been

supposed by many that they would disappear together. Nor do any words employed in our day denounce it with an indignation more burning than that which glowed on the lips of the fathers. Mr. Gouverneur Morris, of Pennsylvania, said in Convention, that "he never would concur in upholding domestic slavery: it was a nefarious institution."[1] In another mood, and with mild juridical phrase, Mr. Madison "thought it wrong to admit in the Constitution the idea that there could be property in men."[2] And Washington, in a letter written near this period, says, with a frankness worthy of imitation," There is only one proper and effectual mode by which the abolition of slavery can be accomplished, and that is by legislative authority; *and this, as far as my suffrage will go, shall never be wanting.*"[3]

In this spirit was the National Constitution adopted. Glance now at the earliest Congress assembled under this Constitution. Among the petitions presented to that body was one from the Abolition Society of Pennsylvania, signed by Benjamin Franklin, as President. This venerable man, whose active life had been devoted to the welfare of mankind at home and abroad, who as philosopher and statesman had arrested the attention of the world, — who had ravished the lightning from the skies, and the sceptre from a tyrant, — who, as member of the Continental Congress, had set his name to the Declaration of Independence, and, as member of the Convention, had again set his name to the National Constitution, — in whom was embodied, more,

[1] Madison's Debates, p. 1263.

[2] Ibid. p. 1429.

[3] Letter to Robert Morris, April 12, 1786: Writings, ed. Sparks, Vol. IX. p. 159.

perhaps, than in any other person, the true spirit of American institutions, at once practical and humane, — than whom no one could be more familiar with the purposes and aspirations of the founders, — this veteran, eighty-four years of age, within a few months only of his death, now appeared by petition at the bar of that Congress whose powers he had helped to define and establish. "Your memorialists," he says, — and this Convention now repeats the words of Franklin, — "particularly engaged in attending to the distresses arising from Slavery, believe it their indispensable duty to present this subject to your notice. They have observed with real satisfaction that many important and salutary powers are vested in you for 'promoting the welfare and securing the blessings of Liberty to the people of the United States'; and as they conceive that these blessings ought rightfully to be administered, *without distinction of color,* to all descriptions of people, *so they indulge themselves in the pleasing expectation that nothing which can be done for the relief of the unhappy objects of their care will be either omitted or delayed.*" The memorialists conclude as follows, — and this Convention adopts their weighty words as its own: "Under these impressions they earnestly entreat your serious attention to the subject of Slavery; *that you will be pleased to countenance the restoration of liberty to those unhappy men, who alone, in this land of Freedom, are degraded into perpetual bondage,* and who, amidst the general joy of surrounding freemen, are groaning in servile subjection; that you will devise means for removing this inconsistency from the character of the American people; that you will promote mercy and justice towards this distressed race; *and that you will step to the very verge*

of the power vested in you for DISCOURAGING every species of traffic in the persons of our fellow-men.

"BENJ. FRANKLIN, *President.*" [1]

Such a prayer, signed by Franklin as President of an Abolition Society, not only shows the spirit of the times, but fixes forever the true policy of the Republic.

Fellow-citizens, there are men in our day, who, while professing a certain disinclination to Slavery, are careful to add that they are not Abolitionists. Jefferson, Washington, and Franklin shrank from no such designation. It is a part of their lives which the honest historian commemorates with pride, that they were unhesitating, open, avowed Abolitionists. By such men, and under the benign influence of such sentiments, was the National Government inaugurated, and dedicated to Freedom. At this time, nowhere under the National Government did Slavery exist. Only in the States, skulking beneath the shelter of local laws, was it allowed to remain.

Change from Antislavery to Proslavery. — But the generous sentiments which filled the souls of the early patriots, and impressed upon the government they founded, as upon the very coin they circulated, the image and superscription of LIBERTY, gradually lost their power. The blessings of Freedom being already secured to themselves, the freemen of the land grew indifferent to the freedom of others. They ceased to think of the slaves. The slave-masters availed themselves of this indifference, and, though few in number, compared with the non-slaveholders, even in the Slave States, they were able, under the impulse of an imagined self-interest, by the skilful tactics of party, and espe-

[1] Annals of Congress, 1st Cong. 2d Sess., 1197, 1198.

cially by an unhesitating, persevering union among themselves, swaying by turns both the great political parties, to obtain the control of the National Government, which they have held through a long succession of years, bending it to their purposes, compelling it to do their will, and imposing upon it a policy friendly to Slavery, offensive to Freedom only, and directly opposed to the sentiments of its founders. Here was a fundamental change in the character of the Government, to which may be referred much of the evil which has perplexed the country.

Usurpations and Aggressions of the Slave Power. — Look at the extent to which this malign influence has predominated. The Slave States are far inferior to the Free States in population, wealth, education, libraries, resources of all kinds, and yet they have taken to themselves the lion's share of honor and profit under the Constitution. They have held the Presidency for fifty-seven years, while the Free States have held it for twelve years only. But without pursuing this game of political sweepstakes, which the Slave Power has perpetually played, we present what is more important, as indicative of its spirit, — the aggressions and usurpations by which it has turned the National Government from its original character of Freedom, and prostituted it to Slavery. Here is a brief catalogue.

Early in this century, when the District of Columbia was finally occupied as the National Capital, the Slave Power succeeded, in defiance of the spirit of the Constitution, and even of the express letter of one of its Amendments, in securing for Slavery, within the District, the countenance of the National Government.

Until then, Slavery existed nowhere on the land within the reach and exclusive jurisdiction of this Government.

It next secured for Slavery another recognition under the National Government, in the broad Territory of Louisiana, purchased from France.

It next placed Slavery again under the sanction of the National Government, in the Territory of Florida, purchased from Spain.

Waxing powerful, it was able, after a severe struggle, to impose terms upon the National Government, compelling it to receive Missouri into the Union with a Slaveholding Constitution.

It instigated and carried on a most expensive war in Florida, mainly to recover fugitive slaves,—thus degrading the army of the United States to slave-hunters.

It wrested from Mexico the Province of Texas, in order to extend Slavery, and, triumphing over all opposition, finally secured its admission into the Union with a Constitution making Slavery perpetual.

It next plunged the country into unjust war with Mexico, to gain new lands for Slavery.

With the meanness as well as insolence of tyranny, it compelled the National Government to abstain from acknowledging the neighbor Republic of Hayti, where slaves have become freemen, and established an independent nation.

It compelled the National Government to stoop ignobly, and in vain, before the British queen, to secure compensation for slaves, who, in the exercise of the natural rights of man, had asserted and achieved their freedom on the Atlantic Ocean, and afterwards sought shelter in Bermuda.

It compelled the National Government to seek the negotiation of treaties for the surrender of fugitive slaves, — thus making the Republic assert in foreign lands property in human flesh.

It joined in declaring the foreign slave-trade *piracy*, but insists upon the coastwise slave-trade under the auspices of the National Government.

It has rejected for years petitions to Congress against Slavery, — thus, in order to shield Slavery, practically denying the right of petition.

It has imprisoned and sold into slavery colored citizens of Massachusetts, entitled, under the Constitution of the United States, to all the privileges of citizens.

It insulted and exiled from Charleston and New Orleans the honored representatives of Massachusetts, who were sent to those places with the commission of the Commonwealth, in order to throw the shield of the Constitution over her colored citizens.

In formal despatches by the pen of Mr. Calhoun, as Secretary of State, it has made the Republic stand before the nations of the earth as the vindicator of Slavery.

It puts forth the hideous effrontery, that Slavery can go to all newly acquired territories, and have the protection of the national flag.

In defiance of the desire declared by the Fathers to limit and discourage Slavery, the Slave Power has successively introduced into the Union Kentucky, Tennessee, Louisiana, Mississippi, Alabama, Missouri, Arkansas, Florida, and Texas, as Slaveholding States, — thus, at each stage, fortifying its political power, and making the National Government lend new sanction to Slavery.

Such are some of the usurpations and aggressions of the Slave Power. By such steps the National Government is perverted from its original purposes, its character changed, and its powers subjected to Slavery. It is pitiful to see Freedom suffer at any time from any hands. It is doubly pitiful, when she suffers from a government nursed by her into strength, and quickened by her into those activities which are the highest glory.

> "So the struck eagle, stretched upon the plain,
> No more through rolling clouds to soar again,
> Viewed his own feather on the fatal dart,
> And winged the shaft that quivered in his heart.
> Keen were his pangs, but keener far to feel
> He nursed the pinion which impelled the steel,
> While the same plumage that had warmed his nest
> Drank the last life-drop of his bleeding breast."

That we may fully estimate this system of conduct in its enormity, we must call to mind the evils of Slavery, where it is allowed to exist. And here language is inadequate to portray the infinite sum of wretchedness, degradation, injustice, legalized by this unholy relation. There is no offence against religion, against morals, against humanity, which does not stalk, in the license of Slavery, "unwhipped of justice." For the husband and wife there is no marriage. For the mother there is no assurance that her infant will not be torn from her breast. For all who bear the name of Slave there is nothing which they can call their own. But the bondman is not the only sufferer. He does not sit alone in his degradation. By his side is the master, who, in the debasing influences on his own soul, is compelled to share the degradation to which he dooms his fellow-men. "The man must be a prodigy," says Jefferson, "who can retain his manners and morals undepraved by such cir-

cumstances."[1] And this is not all. The whole social fabric is disorganized; labor loses its dignity; industry sickens; education finds no schools; religion finds no churches; and all the land of Slavery is impoverished.

Shall Slavery be extended? — Now, at last, the Slave Power threatens to carry Slavery into the vast regions of New Mexico and California, existing territories of the United States, already purged of this evil by express legislation of the Mexican government. It is the immediate urgency of this question that has aroused the country to the successive aggressions of the Slave Power, and to its undue influence over the National Government. Without doubt, this is the most pressing form in which the Great Issue is presented. Nor can it be exaggerated. These territories, excluding Oregon, embrace upwards of five hundred thousand square miles. The immensity of this tract may be partially comprehended, when we consider that Massachusetts contains only 7,800 miles, all New England only 63,280, and all the original thirteen States which declared Independence only 352,000. And the distinct question is presented, whether the National Government shall carry into this imperial region the curse of Slavery, with its monstrous brood of ignorance, poverty, and degradation, or Freedom, with her attendant train of blessings.

A direct Prohibition by Congress necessary to prevent Extension of Slavery. — An attempt is made to divert attention from this question by denying the necessity of Congressional enactment to prevent the extension of Slavery into California, on the ground that climate and

[1] Notes on Virginia, Query XVIII.

physical condition furnish natural obstacles to its existence there. This is a weak device. It is well known that Slavery did exist there for many years, until excluded by law, — that California lies in the same range of latitude as the Slave States of the Union, and it may be added, also, the Barbary States of Africa, — that the mineral wealth of California creates a demand for slave labor, which would overcome any physical obstacle to its introduction, — that Slavery has existed in every country from which it was not excluded by the laws or religion of the people; and still further, it is an undeniable fact, that already slaves have been taken into California, and publicly sold there at enormous prices, and thousands are now on their way thither from the Southern States and from South America. In support of this last statement numerous authorities might be adduced. A member of Congress from Tennessee recently declared, that, within his own knowledge, there would be taken to California, during the summer just past, from ten to twelve thousand slaves. Another person states, from reliable evidence, that whole families are moving with slaves from Tennessee, Arkansas, and Missouri. Mr. Rowe, under date of May 13, at Independence, Missouri, on his way to the Pacific, writes to the paper of which he was recently the editor, the "Belfast Journal," Maine: "I have seen as many as a dozen teams going along *with their families of slaves.*" And Mr. Boggs, once Governor of Missouri, now a resident of California, is quoted as writing to a friend at home as follows: "If your sons will bring out two or three negroes who can cook and attend at a hotel, your brother will pay cash for them at a good profit, and take it as a great favor."

After these things, to which many more might be added, it will not be denied, that, in order to secure Freedom in the Territories, there must be direct and early prohibition of Slavery by Act of Congress.

POSITION OF THE FREE-SOIL PARTY.

THE way is now prepared to consider our precise position with regard to the accumulating aggressions of the Slave Power, revealed especially in recent efforts to extend Slavery.

Wilmot Proviso. — To the end that the country and the age may not witness the foul sin of a Republic dedicated to Freedom pouring into vast unsettled lands, as into the veins of an infant, the festering poison of Slavery, destined, as time advances, to show itself only in cancer and leprous disease, we pledge ourselves to unremitting endeavors for the passage of the Wilmot Proviso, or some other form of Congressional enactment prohibiting Slavery in the Territories, without equivocation or compromise of any kind.

Opposition to Slavery wherever we are responsible for it. — But we do not content ourselves with opposing this last act of aggression. We go further. Not only from desire to bring the National Government back again to the spirit of the Fathers, but also from deep convictions of morals and religion, is our hostility to Slavery derived. Slavery is wrong; nor can any human legislation elevate into any respectability the blasphemy of tyranny, that man can hold property in his fellow-man. Slavery, we repeat, is wrong, and therefore we cannot sanction

it. In these convictions will be found the measure of our duties.

Wherever we are responsible for Slavery, we oppose it. Our opposition is coextensive with our responsibility. In the States Slavery is sustained by local law; and although we are compelled to share the stigma upon the fair fame of the country which its presence inflicts, yet it receives no direct sanction at our hands. We are not responsible for it there. The National Government, in which we are represented, is not responsible for it there. The evil is not at our own particular doors. But Slavery everywhere under the Constitution of the United States, everywhere under the exclusive jurisdiction of the National Government, everywhere under the national flag, is at our own particular doors. The freemen of the North are responsible for it equally with the traffickers in flesh who haunt the shambles of the South. Nor will this responsibility cease, so long as Slavery continues to exist in the District of Columbia, in any Territories of the United States, or anywhere on the high seas, beneath the protecting flag of the Republic. The fetters of every slave within these jurisdictions are bound and clasped by the votes of Massachusetts. Their chains, as they clank, seem to say, "Massachusetts does this outrage."

Divorce of the National Government from Slavery. — This must not be any longer. Let the word go forth, that the National Government shall be divorced from all support of Slavery, and shall never hereafter sanction it. So doing, it will be brought back to the condition and character which it enjoyed at the adoption of the Constitution.

The National Government must be on the side of Freedom. — Accomplishing these specific changes, a new tone will be given to the Republic. The Slave Power will be broken, and Slavery driven from its present intrenchments under the National Government. The influence of such a change will be incalculable. The whole weight of the Government will then be taken from the side of Slavery, where it has been placed by the Slave Power, and put on the side of Freedom, according to the original purposes and aspirations of its founders. This of itself is an end for which to labor earnestly in the spirit of the Constitution. Let it never be forgotten, as the pole-star of our policy, that the National Government must be placed, openly, actively, and perpetually, on the side of Freedom.

It must be openly on the side of Freedom. There must be no equivocation, concealment, or reserve. It must not, like the witches in Macbeth, "palter in a double sense." It must avow itself distinctly and firmly the enemy of Slavery, and thus give to the friends of Freedom, now struggling throughout the Slave States, the advantage of its countenance.

It must be actively on the side of Freedom. It cannot be content with simply bearing its testimony. It must act. Within the constitutional sphere of its influence, it must be felt as the enemy of Slavery. It must now exert itself for Freedom as zealously and effectively as for many years it has exerted itself for Slavery.

It must be perpetually on the side of Freedom. It must not be uncertain, vacillating, or temporary, in this beneficent policy, but fixed and constant, so that hereafter it shall know no change.

In our endeavors to give the Government this ele-

vated character we are cheered by high examples, whose opinions have already been adduced. We ask only that the Republic should once more be inspired by their spirit and be guided by their counsels. Let it join with Jefferson in open, uncompromising hostility to Slavery. Let it unite with Franklin in giving *countenance* to the cause of Emancipation, and *in stepping to the very verge of the power vested in it for* DISCOURAGING *every species of traffic in the persons of our fellow-men.* Let all its officers and members follow Washington, declaring, that, in any legislative effort for the abolition of Slavery, THEIR SUFFRAGES SHALL NEVER BE WANTING.

Other National Matters. — Such are the principles of this Convention on the *national* question of Slavery. Other matters of national interest, on which the opinions of the party have been often expressed, are of a subordinate character. These are: cheap postage; the abolition of all unnecessary offices and salaries; election of civil officers, so far as may be practicable, by the people; retrenchment of the expenses and patronage of the National Government; improvement of rivers and harbors; and free grants to actual settlers of the public lands in reasonable portions.

Administration of General Taylor. — In support of these principles we felt it our duty to oppose the election of General Cass and General Taylor, — both being brought forward under the influence of the Slave Power: the first openly pledged against the Wilmot Proviso; and the second a large slaveholder and recent purchaser of slaves, who was not known, by any acts or declared opinions, to be hostile in any way to Slavery, or even

to its extension, and who, from position, and from the declarations of friends and neighbors, was supposed to be friendly to that institution. General Taylor was elected by the people. And now, while it becomes all to regard his administration with candor, we cannot forget our duty to the cause which brings us together. His most ardent supporters will not venture the assertion that his conduct will bear the test of the principles here declared. We look in vain for any token that the National Government, while in his hands, will be placed openly, actively, and perpetually on the side of Freedom. Indeed, all that any "Free-Soil" supporters vouchsafe in his behalf is the assurance, that, should the Wilmot Proviso receive the sanction of both branches of Congress, — should it prevail in the House of Representatives, and then in that citadel of Slavery, the American Senate, — the "second Washington," as our President is called, will decline to assume the responsibility of arresting its final passage by the Presidential Veto. This is all. The first Washington freely declared his affinity with Antislavery Societies, and that in support of any legislative measure for the abolition of Slavery HIS SUFFRAGE SHOULD NEVER BE WANTING.

The character of the Administration may be inferred from other circumstances.

First. The Slave Power continues to hold its lion's share in the cabinet, and in diplomatic posts abroad, — thus ruling the country at home, and representing it in foreign lands. At the last Presidential election, the number of votes cast in the Slave States, exclusive of South Carolina, where the electors are chosen by the Legislature, was 844,890, while the number cast in the Free States was 2,027,016. And yet there are four per-

sons in the cabinet from the Slave States, and three only from the Free States, while a Slaveholding President presides over all. The diplomatic representation of the country at Paris, St. Petersburg, Vienna, Frankfort, Madrid, Lisbon, Naples, Chili, Mexico, Guatemala, Venezuela, Bolivia, Buenos Ayres, is now confided to persons from Slaveholding States. At Rome our Republic is represented by the son of the great adversary of the Wilmot Proviso, at the Hague by a life-long Louisianian, at Brussels by the son-in-law of John C. Calhoun, and at Berlin by a late Senator who was rewarded with this high appointment in consideration of service to Slavery, while the principles of Freedom abroad are confided to the anxious care of the recently appointed Minister to England. But this is not all.

Secondly. The President, through one of his official organs at Washington, threatens to "frown indignantly" upon the movements of friends of Freedom at the North, though he has had no word of indignation, and no frown, for the schemes of disunion openly put forth by friends of Slavery at the South.

Thirdly. Mr. Clayton, as Secretary of State, in defiance of justice, and in mockery of the principles of the Declaration of Independence, refuses a national passport to a free colored citizen, alleging, that, by a rule of his Department, passports are not granted to colored persons. In marked contrast are the laws of Massachusetts, recognizing such persons as citizens, — and also those words of gratitude and commendation, in which General Jackson, after the Battle of New Orleans, addressed the black soldiers who had shared, with "noble enthusiasm," "the perils and glory of their *white fellow-citizens.*"

Fourthly. The Post-Office Department, in a formal communication with regard to what are called "incendiary publications," announces that the Postmaster-General "leaves the whole subject to the discretion of postmasters under the authority of State Governments." Here is no solitary word of indignation that the mails of the United States are exposed to lawless interruption from partisans of Slavery. The Post-Office, intrusted to a son of New England, assumes an abject neutrality, while letters committed to its care are rifled at the instigation of the Slave Power.

Surely we cannot err in declaring that an administration cannot be entitled to our support, which, during the short career of a few months only, is marked by such instances of subserviency to the Slave Power, and of infidelity to the great principles of Freedom.

Necessity of our Organization. — Such is the national position of our party. We are a national party, established for national purposes, such as can be accomplished by a national party only. If the principles which we have at heart were supported openly, actively, constantly by either of the other parties, there would be no occasion for our organization. But whatever may have been, or whatever may now be, the opinions of individual members, it is undeniable, that, *as national parties,* they have never opposed Slavery in any form. Neither has ever sustained any measure for the abolition of Slavery in the District of Columbia, but, on the contrary, discountenanced all such measures. Neither has ever opposed, in any form, the coastwise slave-trade under the flag of the United States. Neither has ever opposed the extension of Slavery. Neither has ever

striven to divorce the National Government from Slavery. Neither has ever labored to place the National Government openly, actively, and perpetually on the side of Freedom. Nor is there any assurance, satisfactory to persons not biased by political associations, that either of these organizations will ever, as a *national party*, espouse the cause of Freedom.

Circumstances in the very constitution of these parties render it difficult, if not impossible, for them to act in this behalf. Constructed subtly with a view to political success, they are spread everywhere throughout the Union, and the principles which they uphold are pruned and modified to meet existing sentiment in different parts of the country. Neither can venture, as a party, to place itself on the side of Freedom, because, by such a course, it would disaffect that slaveholding support which is essential to its political success. The Antislavery resolutions adopted by legislatures at the North are regarded as expressions of individual or local opinion only, and not suffered to control the action of the national party. To such an extent is this carried, that Whigs of Massachusetts, professing immitigable hostility to Slavery, recently united in support of a candidate for the Presidency in whose behalf the eminent slaveholding Whig, Mr. Berrien, had "implored his fellow-citizens of Georgia, Whig and Democratic, to forget for a time their party divisions, and to know each other only as Southern men."

Fellow-citizens, individuals in each of the old parties strove in vain to produce a change, and to make them exponents of growing Antislavery sentiments. At Baltimore and Philadelphia, in the great Conventions of these parties, Slavery triumphed. So strongly were they

both arrayed against Freedom, and so unrelenting were they in ostracism of its generous supporters, — of all who had written or spoken in its behalf, — that it is not going too far to say, that, if Jefferson, or Franklin, or Washington could have descended from his sphere above, and revisited the country which he had nobly dedicated to Freedom, he could not, with his well-known and recorded opinions against Slavery, have received a nomination for the Presidency from either of these Conventions.

To maintain the principles of Freedom, as set forth in this Address, it might be well for us to take a lesson from the old parties, — to learn from them the importance of perseverance and union, and thus to see the value of a distinct political organization, — and, profiting by these instructions, to direct the efforts of the friends of Freedom everywhere throughout the country into this channel.

OBJECTIONS.

THERE are objections from various quarters to the establishment of our party, — some urged in ignorance, some in the sophist spirit, which would "make the worse appear the better reason." Glance at them.

Single Idea. — It is often said that it is a party of a single idea. This is a phrase, and nothing more. The moving cause and animating soul of our party is the idea of Freedom. But this idea is manifold in character and influence. It is the idea of the Declaration of Independence. It is the great idea of the founders of the Republic. In adopting it as the paramount principle of our movement we declare our purpose to carry out the Great Idea of our institutions, as originally es-

tablished. In other words, it is our lofty aim to bring back the administration of the Government to the standard of a Christian Democracy, with a sincere and wide regard for Human Rights, — that it may be in reality, as in name, a Republic. With the comprehensive cause of Freedom are associated in our vows, as has been already seen, other questions important to the well-being of the people. Nor is there any cause by which mankind can be advanced that is not embraced by our aspirations. "I am a man, and regard nothing human as foreign to me," was the sentiment of the Roman poet, who had once been a slave; and these words may be adopted as the motto of our movement.

Sectional, or against the South. — Again, it is said that ours is a sectional party; and the charge is sometimes put in another form, — that it is a party against the South. The significant words of Washington are quoted to warn the country against "geographical" questions.[1] Now, if we proposed any system of measures calculated to exclude absolutely any "geographical" portion of the country from the benefit of the general laws and Constitution of the United States, or to operate exclusively and by name upon any "geographical" section, — or perhaps, if we proposed to interfere with Slavery in the States, —

[1] "In contemplating the causes which may disturb our Union, it occurs as matter of serious concern, that any ground should have been furnished for characterizing parties by *geographical* discriminations, *Northern* and *Southern*, *Atlantic* and *Western;* whence designing men may endeavor to excite a belief that there is a real difference of local interests and views. One of the expedients of party to acquire influence within particular districts is to misrepresent the opinions and aims of other districts. You cannot shield yourselves too much against the jealousies and heart-burnings which spring from these misrepresentations; they tend to render alien to each other those who ought to be bound together by fraternal affection." — *Farewell Address: Writings*, ed. Sparks, Vol. XII. p. 221.

there might be some ground for this charge; but, as we propose to act against Slavery only where it exists under the National Government, and where this Government is responsible for it, nobody can say that we are sectional, or against the South. Our aim is in no respect sectional, but in every respect national. It is in no respect against the South, but against the Evil Spirit having its home at the South, which has obtained the control of the Government. As well might it be said that Jefferson, Franklin, and Washington were sectional, and against the South.

It is true that at present a large portion of the party are at the North; but if our cause is sectional on this account, then is the Tariff sectional, because its chief supporters are also in the North.

Unquestionably there is a particular class of individuals against whom we are obliged to act. These are the slave-masters, wherever situated throughout the country, constituting, according to recent calculations, not more than 248,000 in all. Those most interested are probably not more than 100,000. For years this band has acted against the whole country, and subjugated it to Slavery. Surely it does not become them, or their partisans, to complain that an effort is now made to rally the whole country against their tyranny. There are many who forget that the larger portion of the people at the South are non-slaveholders, interested equally with ourselves — nay, more than we are — in the overthrow of that power which has so long dictated its disastrous and discreditable policy. To these we may ultimately look for support, so soon as our movement is able to furnish them with the needful hope and strength.

If at the present moment our efforts seem in any

respect sectional or against the South, it is simply because the chief opponents of our principles are there. But our principles are not sectional; they are applicable to the whole Union, — nay, more, to all the human race. They are universal as Man.

Interference with other Parties. — Again, it is sometimes said that we interfere with the other parties. This is true. And it is necessary, because the other parties do not represent the principles which we consider of paramount importance. No intelligent person, careful and honest in his statements, will undertake to say that either of them does represent these. Failing thus, they are unworthy of support. They do not embody the great ideas of the Republic.

Here again it is important to distinguish between individuals and the parties to which they adhere. There are many, doubtless, in both the old parties, who subscribe to our principles, but still hug the belief that these principles can be best carried into action by the parties to which they are respectively attached. Influenced by the common bias, which indisposes distrust of the political party with which they have been associated, they continue in the companionship early adopted, and often learn to combat for an organization, which, *as a whole,* is hostile to the very principles they have at heart. *Most certainly his devotion to Freedom may well be questioned, who adheres to a national party which declines to be the organ of Freedom.* He only is in earnest who places Freedom above party, and does not hesitate to leave a party which neglects to serve Freedom. Such men we trust to welcome in large numbers from both the old organizations.

Alleged Injurious Influences in the Slave States. — Once more, it is said that the Antislavery Movement at the North, and particularly its political form, have caused unnecessary irritation among slave-owners, and thwarted a more proper movement at the South. It is sometimes declared that we have not promoted, but rather retarded, the cause of Emancipation.

To this let it be said, in the first place, that our direct and primary object is not Emancipation in the States, but the establishment of Freedom everywhere under the National Government; and there is reason to believe that we have already done something towards the accomplishment of this object. By the confession of slaveholders themselves, in one of the recent "Addresses" put forth from their conclave at Washington, it appears that we have not labored in vain. "This agitation, and the use of means," says the Address prepared by Mr. Berrien, "have been continued with more or less activity for a series of years, *not without doing much towards effecting the object intended.*" Take courage, fellow-citizens, from this confession, and do not doubt that your continued efforts must finally prevail.

But, in the second place, whatever may have been the temporary shock to Emancipation in the Slave States, it will not be denied by candid minds that the efforts in the North have hastened the great day of Freedom. They have encouraged its friends in Kentucky, Missouri, Virginia, Maryland, and Tennessee, and have contributed to diffuse the information and awaken the generous resolve which are so much needed. Nor can it be doubted, that, if the North had continued silent, Mr. Clay, in Kentucky, and Mr. Benton, in Missouri, would both have

been silent. Without the moral support of the Free States, these powerful statesmen would have shrunk from the unequal battle. Let us, then, continue to plead, believing that no honest, earnest voice for Freedom can be in vain. And let us be sure to vote so as best to promote this cause, extorting yet other confessions, from other conclaves of slaveholders, that we are "*doing much towards effecting the object intended.*"

Why carry the Question of Slavery into State Elections? — Having thus reviewed the objections to our organization as a National Movement, applying its principles as a test in the choice of national officers, it only remains to meet one other objection, founded on its introduction into State elections. Here we might content ourselves by replying, that we are a national party, and, as such, simply follow the example of both the other parties. From the beginning of the Government the necessity of such a course has been recognized and acted upon uniformly by these parties; and it does not become them now to question its propriety, when recognized and acted upon by us.

But, independent of example, we are led to this course by conviction of its necessity, in the maintenance of our great cause. It is our duty so to cast our votes on all occasions as to promote the *principles* we have at heart. And it would be wrong to disregard the experience of political history, both at home and abroad, which teaches that it is through the constant, well-directed organization of party that these are best maintained. The influence already exerted over both the old parties, and over the general sentiment of the country, affords additional encouragement. Assuming, then, what few

will be so hardy as to deny, that it is proper for people to combine in parties for the promotion of cherished convictions, it follows, as an irresistible consequence, that this combination should be made most effective for the purpose in view. What is worth doing is worth well doing. If men unite in constructing the powerful and complex machine of a political organization, it must be rendered complete, and thoroughly competent to its work.

Now it will be apparent to those familiar with political transactions, that such an organization, acting only in National elections, and suspending its exertions in State elections, cannot effectually do its work. People acting antagonistically in State elections cannot be brought to act harmoniously in National elections. It is practically impossible to have one permanent party in National affairs and another in State affairs. Such a course would cause uncertainty and ultimate disorganization.

Peculiar local interests may control certain local elections. These constitute the exceptions, and not the rule. They arise where, within the locality, a greater sum of good may be accomplished by sustaining a certain person, independent of party, than by voting strictly according to party. But it is clear that such instances cannot be frequent without impairing the efficiency of the movement.

It is natural that parties in our country should take their strongest complexion from National affairs, because these affairs are of the most absorbing interest. Justly important as is the election of Municipal and State officers, we feel that they are of less importance than the election of a President of the United States, — as the

character of the State Government, whose influence is confined to a limited sphere, is of less importance than that of the National Government, whose influence embraces all the States, and reaches to foreign lands. Therefore the organizations of party in the States are properly treated as subordinate, though ancillary, to the National organizations. They are branches or limbs, which repay the strength they derive from the great trunk by helping to extend in all directions its protecting power. But these branches cannot be lopped off or neglected.

Again, the influence of each individual is of importance. But the State itself is a compound individual, and just in proportion to its size and character it is important that it should be arrayed as a powerful unit in support of our organization. In this way its influence can be brought to bear most effectually upon the National Government in support of our *principles.*

Fellow-citizens, the question again recurs, "Are you for Freedom, or are you for Slavery?" If you are for Freedom, do not hesitate to support the National party dedicated to this cause. Strive in all ways to extend its influence, to enlarge its means of efficiency, and to consolidate its strength. And consider well, that this can be accomplished only by casting your votes for those who, while avowing our principles, are willing to sacrifice ancient party ties in order to maintain them. By her towns, counties, and districts, by her executive and legislative departments, Massachusetts must call upon the National Government to change from the policy of Slavery to the policy of Freedom. *Massachusetts must refuse to support any Government which does not hearken to this request.*

Local Matters. — The sentiments which inspire the Party of Freedom in opposition to Slavery must naturally control their conduct on all questions of local policy. Friends of Human Rights, they cannot regard with indifference anything by which these are impaired. Recognizing Justice and Beneficence as the end and aim of Government, they must sympathize with all efforts to extend their sway. Let the Government be ever just. Let it be ever beneficent. Abuses and wrongs will then disappear, and the State will stand forth in the moral dignity of true manhood. If there be anything in the Commonwealth inconsistent with these sentiments, it must be changed. This should be done in no spirit of political empiricism, but with an honest and intelligent regard to practical results.

There is complaint in many, and even opposite quarters, of numerous corporations annually established by our Legislature, of the considerable time thus consumed in special legislation, and, still further, of the influence these corporations are able to exert over political affairs, dispensing a patronage exceeding that of the National Government within the borders of our State. Without considering these things in detail, it is impossible to avoid calling attention to the perverse influence from this source. Of this we can speak with knowledge. *The efforts to place the National Government on the side of Freedom* have received little sympathy from corporations, or from persons largely interested in them, but have rather encountered their opposition, sometimes concealed, sometimes open, often bitter and vindictive. It is easy to explain this. In corporations is the Money Power of the Commonwealth. Thus far the instinct of property has proved stronger in Massachusetts than

the instinct of Freedom. The Money Power has joined hands with the Slave Power. Selfish, grasping, subtle, tyrannical, like its ally, it will not brook opposition. It claims the Commonwealth as its own, and too successfully enlists in its support that needy talent and easy virtue which are required to maintain its sway. Perhaps the true remedy for this evil will be found in a more enlightened public sentiment; meanwhile we must do what we can to restrain this influence, by watchful legislation, if need be, but especially by directing against it the finger-point of a generous indignation.

The natural influence of the Money Power is still further increased by defects in our present system of Representation. The large cities, particularly Boston, electing Representatives by a general ticket, are able to return a compact delegation, united in political opinions, while the country, through divisions into small towns, is practically subdivided into districts, and chooses Representatives differing in opinions. A careful estimate of the influence thus wrought will show that Boston alone, actually casting 13,000 votes, is able to neutralize the 26,000 votes cast by all western Massachusetts, including Berkshire, Franklin, Hampshire, and Hampden. The large cities, which are the seat of the Money Power, are thus able, though a minority, to control the State. Like the Slave Power, they are strong from union. This abuse calls for amendment; and it will be for the friends of our cause to urge such measures as the necessity of the case requires.

Our Candidates. — In the fulfilment of our duty to sustain our principles at all times, in all elections, National or State, we have nominated Hon. STEPHEN C.

PHILLIPS, of Salem, as our candidate for Governor. With confidence and pride we ask for him your support. Few in the community, by a long series of beneficent services, have entitled themselves to the same degree of kindly regard. In him we find a liberal education blended with a liberal spirit, — the experience and the wealth of the successful merchant turned into the channels of Benevolence, and the influence earned by various labors, in various posts of honor and trust, consecrated to Human Improvement. All the great causes which are doing so much to renovate the age, Temperance, Education, Peace, Freedom, have in him a discreet, practical, devoted, self-sacrificing friend. Formerly associated with the Whig party, and a member of Congress, chosen by Whig votes, he set the example of renouncing his party, when it became openly faithless to Freedom, and by unreserved and noble effort has done much to strengthen the movement in which we are engaged.

As candidate for Lieutenant-Governor, we nominate Hon. JOHN MILLS, of Springfield, a gentleman of spotless life, with ample experience in many spheres of action, formerly an honored member of the Democratic party, who has filled responsible stations under the Governments of the State and the Nation, and who, like Mr. Phillips, has testified his fidelity to Freedom by renouncing the party to which he belonged.

Fellow-citizens, such are our principles, and such our candidates. Join us in their support. Join us, all who love Freedom and hate Slavery. Join us, all who cherish the Constitution and the Union. Help us in

endeavors to crown them again with their early virtue. Join us, all who reverence the memory of the fathers, and would have their spirit once more animate the Republic. Join us, all who would have the National Government administered in the spirit of Freedom, and not in the spirit of Slavery. The occasion is urgent. Active, resolute exertions must be made. It does not become the sons of the Pilgrims, and the sons of the Revolution, to be *neutral* in this contest. Such was not the temper of their fathers. In such a contest neutrality is treason to Human Rights. In questions *merely political* an honest man may stand neuter; but what true heart can be neuter, when the distinct question is put, which we now address to the people of Massachusetts, "Are you for Freedom, or are you for Slavery?"

Finally, we appeal to the moral and religious sentiments of the Commonwealth. When these are thoroughly moved, there can be no question of the result. We invoke the sympathy of the pulpit. Let it preach deliverance to the captive. We call upon good men of all sects and all parties to lend their support. You all agree in our PRINCIPLES. Do not practically oppose them by continued adhesion to a national party hostile to them. Join in proclaiming them through the new Party of Freedom.

The Resolutions at the close of the Address are omitted, being in the nature of a repetition, which, however important at the time, is of less value as a record of opinions.

WASHINGTON AN ABOLITIONIST.

Letter to the Boston Daily Atlas, September 27, 1849.

The Address to the People of Massachusetts, adopted by the Free-Soil Convention, was violently attacked, as will appear from the following reply, written at a hotel in New York, where Mr. Sumner happened to be staying, when he saw the criticism.

New York, Irving Hotel, September 27, 1849.

GENTLEMEN, — My attention has been directed to-day to an article in your paper of the 25th September, entitled "Mr. Sumner and his Authorities," in which I am charged, among other things, with misrepresenting the opinions of Washington, particularly in the following sentence, in the Address recently adopted by the Free-Soil Convention at Worcester: —

"The first Washington freely declared his affinity with Antislavery Societies, and that in support of any legislative measure for the abolition of Slavery his suffrage should never be wanting."

A more familiar acquaintance with the opinions of our great exemplar would have prevented the writer in the Atlas from falsely accusing a neighbor. It would have prevented him from saying that the letter to Robert Morris, from which part of the above statement is drawn, was written more than ten years before the adoption of the National Constitution, and from dating it in 1776, when the letter in reality bears date in 1786.

I will not doubt your willingness to repair the injustice you have allowed in the columns of the Atlas, and therefore ask you to publish this note, with the accompanying extracts, showing the opinions of Washington.

By these it will appear that Washington freely declared to Brissot de Warville, in a conversation which took place in 1788, and was published in 1791, that he rejoiced in what was doing in other States for the emancipation of the negroes, — that he sincerely desired the extension of it to his own country, — and, contrary to the opinions of many Virginians, *expressly said that he wished the formation of an Antislavery Society, and that he would second such a society.*

It will appear, also, that Washington said to Robert Morris, in a letter dated April 12, 1786, that in support of any legislative measure for the abolition of Slavery his suffrage should not be wanting, — that he said to Lafayette, in a letter dated May 10, 1786, that gradual emancipation certainly might and assuredly ought to be effected, and that, too, by legislative authority, — that he said to John F. Mercer, in a letter dated September 9, 1786, that it was among his first wishes to see some plan adopted by which Slavery in this country may be abolished by law, — that he said to Sir John Sinclair, in a letter dated December 11, 1796, that Maryland and Virginia must have, and at a period not remote, laws for the gradual abolition of Slavery, — and that by his will, dated July 9, 1790 [1799], he expressly emancipated his slaves.

Thus acting, and thus constantly avowing his sentiments in favor of the abolition of Slavery, Washington is properly called an Abolitionist.

I cannot close without correcting the insinuation of the writer in the Atlas, that it is my wish, or that it is the wish of the Free-Soil party to interfere, through Congress, with Slavery in the States. This is a mistake. Our position is this. They who are responsible for Slavery should abolish it. Our duties are coextensive with our responsibilities. We at the North are responsible for Slavery everywhere within the jurisdiction of Congress, and it is here that we should exert ourselves, according to the principles of Washington, to abolish it by legislative action.

Still further, our sympathies and God-speed must attend every effort in the States to remove this great evil. We should join with Washington in his exclamation to Lafayette, on learning that this philanthropic Frenchman had purchased an estate in Cayenne, with the view of emancipating the slaves on it: "Would to God a like spirit might diffuse itself generally into the minds of the people of this country!"

I will not trouble you with any comment on the other criticisms upon me by the writer in the Atlas.

I am, Gentlemen, your obedient servant,

CHARLES SUMNER.

TO THE EDITORS OF THE ATLAS.

OPINIONS OF WASHINGTON ON SLAVERY.

"He has nevertheless (must I say it?) a numerous crowd of slaves; but they are treated with the greatest humanity, — well fed, well clothed, and kept to moderate labor; they bless God without ceasing for having given them so good a master. It is a task worthy of a soul so elevated, so pure, and so disinterested, to begin the revolution in Virginia, to

prepare the way for *the emancipation of the negroes. This great man declared to me that he rejoiced at what was doing in other States on this subject, that he sincerely desired the extension of it in his own country;* but he did not dissemble that there were still many obstacles to be overcome, — that it was dangerous to strike too vigorously at a prejudice which had begun to diminish, — that time, patience, and information would not fail to vanquish it. Almost all the Virginians, added he, believe that the liberty of the blacks cannot soon become general. *This is the reason why they wish not to form a society,* which may give dangerous ideas to their slaves. There is another obstacle: the great plantations, of which the State is composed, render it necessary for men to live so dispersed, *that frequent meetings of a society would be difficult.*

"I replied, that the Virginians were in an error, — that, evidently, sooner or later, the negroes would obtain their liberty everywhere. It is, then, for the interest of your countrymen to prepare the way to such a revolution, by endeavoring to reconcile the restitution of the rights of the blacks with the interest of the whites. *The means necessary to be taken to this effect can only be the work of a* SOCIETY; and it is worthy the Saviour of America to put himself at their head, and to open the door of liberty to three hundred thousand unhappy beings of his own State. *He told me that he desired the formation of a* SOCIETY, *and that he would second it;* but that he did not think the moment favorable." — *Conversation with Washington, in the New Travels of Brissot de Warville in the United States in* 1788, *published in* 1791, *and translated in* 1792.

"I can only say, that there is not a man living who wishes more sincerely than I do to see a plan adopted for the abolition of it [Slavery]; but there is only one proper and effectual mode by which it can be accomplished, and that is by *legislative authority; and this, as far as my suffrage will go, shall never be wanting.*" — *Letter of Washington to Robert Morris, April* 12, 1786.

"The benevolence of your heart, my dear Marquis, is so conspicuous upon all occasions, that I never wonder at any fresh proofs of it; but your late purchase of an estate in the Colony of Cayenne, *with a view of emancipating the slaves on it,* is a generous and noble proof of your humanity. *Would to God a like spirit might diffuse itself generally into the minds of the people of this country!* But I despair of seeing it. Some petitions were presented to the Assembly, at its last session, for the abolition of Slavery; but they could scarcely obtain a reading. To set the slaves afloat at once would, I really believe, be productive of much inconvenience and mischief; *but by degrees it certainly might and assuredly ought to be effected, and that, too, by legislative authority.*" — *Letter of Washington to Lafayette, May* 10, 1786.

"I never mean, unless some particular circumstances should compel me to it, to possess another slave by purchase, *it being among my first wishes to see some plan adopted by which Slavery in this country may be abolished by law.*" — *Letter of Washington to John F. Mercer, September* 9, 1786.

"From what I have said, you will perceive that the present prices of lands in Pennsylvania are higher than they are in Maryland and Virginia, although they are not of superior quality, ... [among other reasons] because there are *laws here for the gradual abolition of Slavery,* which neither of the two States above mentioned have at present, *but which nothing is more certain than that they must have, and at a period not remote.*" — *Letter of Washington to Sir John Sinclair, December* 11, 1796.

"Upon the decease of my wife, it is my will and desire that all the slaves whom I hold in my own right shall receive their freedom. To emancipate them during her life would, though earnestly wished by me, be attended with such insuperable difficulties, on account of their intermixture by marriage with the dower negroes, as to excite the most painful sensations, if not disagreeable consequences to the latter, while both descriptions are in the occupancy of the same proprietor; it not being in my power, under the tenure by which the dower negroes are held, to manumit them. . . . . *And I do, moreover, most pointedly and most solemnly enjoin it upon my executors hereafter named, or the survivors of them, to see that this clause respecting slaves, and every part thereof, be religiously fulfilled at the epoch at which it is directed to take place, without evasion, neglect, or delay,* after the crops which may then be on the ground are harvested, particularly as it respects the aged and infirm; seeing that a regular and permanent fund be established for their support, as long as there are subjects requiring it; not trusting to the uncertain provision to be made by individuals." — *Washington's Will, dated July* 9, 1790 [1799]

EQUALITY BEFORE THE LAW:

UNCONSTITUTIONALITY OF SEPARATE COLORED SCHOOLS IN MASSACHUSETTS.

ARGUMENT BEFORE THE SUPREME COURT OF MASSACHUSETTS, IN THE CASE OF SARAH C. ROBERTS *v.* THE CITY OF BOSTON, DECEMBER 4, 1849.

THIS argument, though addressed to the Supreme Court of Massachusetts, is mainly national and universal in topics, so that it is applicable wherever, especially in our country, any discrimination in educational opportunities is founded on race or color. It is a vindication of Equal Rights in Common Schools. The term "Equality before the Law" was here for the first time introduced into our discussions. It is not found in the Common Law, nor until recently in the English language. It is a translation from the French, whence Mr. Sumner took it.

The Supreme Court heard the argument, and in their opinion complimented the advocate; but they did not take the responsibility of annulling the unjust discrimination. After stating the claim of Equality before the Law, Chief-Justice Shaw reduced it to very small proportions, when he said that it meant "only that the rights of all, as they are settled and regulated by law, are equally entitled to the paternal consideration and protection of the law for their maintenance and security."[1] This made it mean nothing; but such was the decision. The *victrix causa* was not less odious to Mr. Sumner, who never ceased to regret the opportunity lost by the Court of contributing an immortal precedent to the recognition and safeguard of human rights.

The error of the Court was repaired by the Legislature of Massachusetts, which in 1855 enacted as follows: —

"In determining the qualifications of scholars to be admitted into any Public School or any District School in this Commonwealth, no distinction shall be made on account of the race, color, or religious opinions of the applicant or scholar."[2]

[1] Roberts *v.* City of Boston, 5 Cushing R., 206.

[2] General Laws of Massachusetts, 1855, Ch. 256, sec. 1.

By other sections, the child excluded on such account was entitled to "damages therefor in an action of tort," with a bill of discovery to obtain evidence. Then came this supplementary protection: —

"Every person belonging to the School Committee under whose rules or directions any child shall be excluded from such school, and every teacher of any such school, shall, on application by the parent or guardian of any such child, state in writing the grounds and reasons of such exclusion."

Since this legislation, Equal Rights have prevailed in the Common Schools of Massachusetts, and nobody would go back to the earlier system.

Associated with Mr. Sumner in this case was Robert Morris, Esq., a colored lawyer.

May it please your Honors: —

CAN any discrimination on account of race or color be made among children entitled to the benefit of our Common Schools under the Constitution and Laws of Massachusetts? This is the question which the Court is now to hear, to consider, and to decide.

Or, stating the question with more detail, and with more particular application to the facts of the present case, are the Committee having superintendence of the Common Schools of Boston intrusted with *power*, under the Constitution and Laws of Massachusetts, to exclude colored children from the schools, and compel them to find education at separate schools, set apart for colored children only, at distances from their homes less convenient than schools open to white children?

This important question arises in an action by a colored child only five years old, who, *by her next friend*, sues the city of Boston for damages on account of a refusal to receive her into one of the Common Schools.

It would be difficult to imagine any case appealing more strongly to your best judgment, whether you regard the parties or the subject. On the one side is the City of Boston, strong in wealth, influence, character;

on the other side is a little child, of degraded color, of humble parents, and still within the period of natural infancy, but strong from her very weakness, and from the irrepressible sympathies of good men, which, by a divine compensation, come to succor the weak. This little child asks at your hands her *personal rights.* So doing, she calls upon you to decide a question which concerns the personal rights of other colored children, — which concerns the Constitution and Laws of the Commonwealth, — which concerns that *peculiar institution* of New England, the Common Schools, — which concerns the fundamental principles of human rights, — which concerns the Christian character of this community. Such parties and such interests justly challenge your earnest attention.

Though this discussion is now for the first time brought before a judicial tribunal, it is no stranger to the public. In the School Committee of Boston for five years it has been the occasion of discord. No less than four different reports, two majority and two minority, forming pamphlets, of solid dimensions, devoted to this question, have been made to this Committee, and afterwards published. The opinions of learned counsel have been enlisted. The controversy, leaving these regular channels, overflowed the newspaper press, and numerous articles appeared, espousing opposite sides. At last it has reached this tribunal. It is in your power to make it subside forever.

THE QUESTION STATED.

Forgetting many of the topics and all of the heats heretofore mingling with the controversy, I shall strive

to present the question in its juridical light, as becomes the habits of this tribunal. It is a question of jurisprudence on which you are to give judgment. But I cannot forget that the principles of morals and of natural justice lie at the foundation of all jurisprudence. Nor can any reference to these be inappropriate in a discussion before this Court.

Of Equality I shall speak, not only as a sentiment, but as a principle embodied in the Constitution of Massachusetts, and obligatory upon court and citizen. It will be my duty to show that this principle, after finding its way into our State Constitution, was recognized in legislation and judicial decisions. Considering next the circumstances of this case, it will be easy to show how completely they violate Constitution, legislation, and judicial proceedings, — *first*, by subjecting colored children to inconvenience inconsistent with the requirements of Equality, and, *secondly*, by establishing a system of Caste odious as that of the Hindoos, — leading to the conclusion that the School Committee have no such power as they have exercised, and that it is the duty of the Court to set aside their unjust by-law. In the course of this discussion I shall exhibit the true idea of our Common Schools, and the fallacy of the pretension that any exclusion or discrimination founded on race or color can be consistent with Equal Rights.

In opening this argument, I begin naturally with the fundamental proposition which, when once established, renders the conclusion irresistible. According to the Constitution of Massachusetts, *all men, without distinction of race or color, are equal before the law.* In the statement of this proposition I use language which, though new in our country, has the advantage of precision.

EQUALITY BEFORE THE LAW: ITS MEANING.

I MIGHT, perhaps, leave this proposition without one word of comment. The equality of men will not be directly denied on this occasion; and yet it is so often assailed of late, that I shall not seem to occupy your time superfluously, I trust, while endeavoring to show what is understood by this term, when used in laws, constitutions, or other political instruments. Here I encounter a prevailing misapprehension. Lord Brougham, in his recent work on Political Philosophy, announces, with something of pungency, that "the notion of Equality, or anything approaching to Equality, among the different members of any community, is altogether wild and fantastic."[1] Mr. Calhoun, in the Senate of the United States, assails both the principle and the form of its statement. He does not hesitate to say that the claim in the Declaration of Independence is "the most false and dangerous of all political errors," — that it "has done more to retard the cause of liberty and civilization, and is doing more at present, than all other causes combined," — that "for a long time it lay dormant, but in the process of time it began to germinate and produce its poisonous fruits."[2] Had these two distinguished authorities chosen

[1] Part II. ch. 4, p. 23.

[2] Speech on the Oregon Bill, June 27, 1848: Works, Vol. IV. pp. 507, 511, 512; Congressional Globe, 30th Cong. 1st Sess., Vol. XVIII. p. 876. These extravagances found an echo afterwards. Mr. Pettit, a Senator of the United States from Indiana, after quoting the words, "We hold these truths to be self-evident, that all men are created equal," proceeded to say: "I hold it to be a self-evident lie. There is no such thing. Sir, tell me that the imbecile, the deformed, the weak, the blurred intellect in man is my equal, physically, mentally, or morally, and you tell me a lie. Tell me, Sir, that the slave in the South, who is born a slave, and with but little over one half the volume of brain that attaches to the Northern European race, is his equal, and you tell what is physically a false-

to comprehend the extent and application of the term thus employed, something, if not all, of their objection would have disappeared. That we may better appreciate its meaning and limitation, I am induced to exhibit the origin and growth of the sentiment, which, finally ripening into a formula of civil and political right, was embodied in the Constitution of Massachusetts.

Equality as a sentiment was early cherished by generous souls. It showed itself in dreams of ancient philosophy, and was declared by Seneca, when, in a letter of consolation on death, he said, *Prima enim pars Æquitatis est Æqualitas*: "The chief part of Equity is Equality."[1]

hood. There is no truth in it at all." (Speech in the Senate of the United States, February 20, 1854: Congressional Globe, 33d Cong. 1st Sess., Appendix, Vol. XXIX. p. 214.) Mr. Choate, without descending into the same particularity, seems to have reached the same conclusion, when, in addressing political associates, he characterized the Declaration of Independence as "that passionate and eloquent manifesto of a revolutionary war," and then again spoke of its self-evident truths as "the glittering and sounding generalities of natural right." (Letter to the Maine Whig State Central Committee, August 9, 1856: Works, Vol. I. pp. 214, 215.) This great question was a hinge in the famous debate between Mr. Douglas and Mr. Lincoln in the contest for the senatorship of Illinois, when the former said, in various forms of speech, that "the Declaration of Independence only included the white people of the United States," and the latter replied, that "the entire records of the world, from the date of the Declaration of Independence up to within three years ago, may be searched in vain for one single affirmation, from one single man, that the negro was not included in the Declaration." (Political Debates between Hon. Abraham Lincoln and Hon. Stephen A. Douglas in the Campaign of 1858 in Illinois: see speech of Douglas at Springfield, July 17, and of Lincoln at Galesburgh, October 7; and *passim*.) Andrew Johnson, speaking in the Senate, showed the side to which he belonged, when he said, after quoting the great words of the Declaration: "Is there an intelligent man throughout the whole country, is there a Senator, when he has stripped himself of all party prejudice, who will come forward and say that he believes that Mr. Jefferson, when he penned that paragraph of the Declaration of Independence, intended it to embrace the African population? Is there a gentleman in the Senate who believes any such thing? . . . . There is not a man of respectable intelligence who will hazard his reputation upon such an assertion." (Congressional Globe, 36th Cong. 1st Sess., December 12, 1859, p. 100.)

[1] Epist. XXX.

But not till the truths of the Christian Religion was it enunciated with persuasive force. Here we learn that God is no respecter of persons, — that he is the Father of all, — and that we are all his children, and brethren to each other. When the Saviour gave us the Lord's Prayer, he taught the sublime doctrine of Human Brotherhood, enfolding the equality of men.

Slowly did this sentiment enter the State. The whole constitution of government was inconsistent with it. An hereditary monarchy, an order of nobility, and the complex ranks of superior and inferior, established by the feudal system, all declare, not the equality, but the inequality of men, and all conspire to perpetuate this inequality. Every infant of royal blood, every noble, every vassal, is a present example, that, whatever may be the injunctions of religion or the sentiment of the heart, men under these institutions are not born equal.

The boldest political reformers of early times did not venture to proclaim this truth, nor did they truly perceive it. Cromwell beheaded his king, but secured the supreme power in hereditary succession to his eldest son. It was left to his loftier contemporary, John Milton, in poetic vision to be entranced

"With fair Equality, fraternal state."[1]

Sidney, who perished a martyr to the liberal cause, drew his inspiration from classic, and not from Christian fountains. The examples of Greece and Rome fed his soul. The English Revolution of 1688, partly by force and partly by the popular voice, changed the succession to the crown, and, if we may credit loyal Englishmen, secured the establishment of Freedom throughout the land. But the Bill of Rights did not declare, nor did the gen-

[1] Paradise Lost, Book XII. 26.

ius of Somers or Maynard conceive the political axiom, that all men are born equal. It may find acceptance from Englishmen in our day, but it is disowned by English institutions.

I would not forget the early testimony of the "judicious" Hooker, who in his "Ecclesiastical Polity," that masterly work, dwells on the equality of men by nature, or the subsequent testimony of Locke, in his "Two Treatises of Government," who, quoting Hooker, asserts for himself that "creatures of the same species and rank, promiscuously born to all the same advantages of nature and the use of the same faculties, should also be *equal* one amongst another, without subordination or subjection."[1] Hooker and Locke saw the equality of men in a state of Nature; but their utterances found more acceptance across the Channel than in England.

It is to France that we must pass for the earliest development of this idea, its amplest illustration, and its most complete, accurate, and logical expression. In the middle of the last century appeared the renowned *Encyclopédie*, edited by Diderot and D'Alembert. This remarkable production, where science, religion, and government are discussed with revolutionary freedom, contains an article on Equality, first published in 1755. Here we find the boldest expression of this sentiment down to that time. "Natural Equality," says this authority, "is that which exists between all men by the constitution of their nature only. This Equality is the principle and the foundation of Liberty. Natural or moral equality is, then, founded upon the constitution of human nature common to all men, who are born, grow,

[1] Locke on Government, Book II. ch. 2, § 4. Hooker, Ecclesiastical Polity, Book I.

subsist, and die in the same manner. Since human nature finds itself the same in all men, it is clear, that, according to Nature's law, each ought to esteem and treat the others as beings who are naturally equal to himself, — that is to say, who are men as well as himself." It is then remarked, that political and civil slavery is in violation of this Equality; and yet the inequalities of nobility in the state are allowed to pass without condemnation. Alluding to these, it is simply said that "they who are elevated above others ought to treat their inferiors as naturally their equals, shunning all outrage, exacting nothing beyond what is their due, and exacting with humanity what is incontestably their due." [1]

Considering the period at which this article was written, we are astonished less by its vagueness and incompleteness than by its bravery and generosity. The dissolute despotism of Louis the Fifteenth poisoned France. The antechambers of the King were thronged by selfish nobles and fawning courtiers. The councils of Government were controlled by royal mistresses. The King, only a few years before, in defiance of Equality, — but in entire harmony with the conduct of the School Committee in Boston, — founded a military school *for nobles only*, carrying into education the distinction of Caste. At such a period the Encyclopedia did well in uttering important and effective truth. The *sentiment* of Equality was fully declared. Nor should we be disappointed, that, at this early day, even the boldest philosophers did not adequately perceive, or, if they perceived, did not dare to utter, our axiom of liberty.

Thus it is with all moral and political ideas. First appearing as a sentiment, they awake a noble impulse,

[1] Encyclopédie, art. *Égalité Naturelle*, Tom. V. p. 415.

filling the soul with generous sympathy, and encouraging to congenial effort. Slowly recognized, they finally pass into a formula, to be acted upon, to be applied, to be defended in the concerns of life, as principles.

Almost contemporaneously with this article in the Encyclopedia our attention is arrested by a poor solitary, of humble extraction, born at Geneva, in Switzerland, of irregular education and life, a wanderer from his birthplace, enjoying a temporary home in France, — Jean Jacques Rousseau. Of audacious genius, setting at nought received opinions, he rushed into notoriety by an eccentric essay "On the Origin of the Inequality among Men," where he sustained the irrational paradox, that men are happier in a state of Nature than under the laws of Civilization. At a later day appeared his famous work on "The Social Contract." In both the sentiment of Equality is invoked against abuses of society, and language is employed tending far beyond Equality in Civil and Political Rights. The conspicuous position since awarded to the speculations of Rousseau, and their influence in diffusing this sentiment, would make this sketch imperfect without allusion to him; but he taught men to feel rather than to know, and his words have more of inspiration than of precision.

The French Revolution was at hand. That great outbreak for enfranchisement was the expression of this sentiment. Here it received distinct and authoritative enunciation. In the Constitutions of Government successively adopted, amid the throes of bloody struggle, the equality of men was constantly proclaimed. Kings, nobles, and all distinctions of birth, passed away before this mighty and triumphant truth.

These Constitutions show the grandeur of the principle, and how it was explained and illustrated. The Constitution of 1791, in its first article, declares that "Men are born and continue free and *equal in their rights.*" This great declaration was explained in the sixth article: "The law is the expression of the general will. . . . . It ought to be the same for all, whether it protect or punish. All citizens, being equal in its eyes, are equally admissible to all dignities, places, and public employments, according to their capacity, and without other distinction than their virtues and talents." At the close of the Declaration of Rights there is this further explanation: "The National Assembly, wishing to establish the French Constitution on the principles which it has just acknowledged and declared, abolishes irrevocably the institutions which bounded liberty and equality of rights. There is no longer nobility, or peerage, or hereditary distinctions, or distinction of orders, or feudal rule, or patrimonial jurisdictions, or any titles, denominations, or prerogatives thence derived, or any orders of chivalry, or any corporations or decorations for which proofs of nobility were required, or which supposed distinctions of birth, or any other superiority than that of public functionaries in the exercise of their functions. . . . . *There is no longer, for any part of the nation, or for any individual, any privilege or exception to the common right of all Frenchmen.*"[1] These diffuse articles all begin and end in the equality of men.

In fitful mood, another Declaration of Rights was brought forward by Condorcet, February 15, 1793. Here are fresh inculcations of Equality. Article First places Equality among the natural, civil, and political rights

[1] Moniteur, 1791, No. 259.

of man. Article Seventh declares: "Equality consists in this, that each individual can enjoy the same rights." Article Eighth: "*The law ought to be equal for all,* whether it recompense or punish, whether it protect or repress." Article Ninth: "All citizens are admissible to all public places, employments, and functions. Free people know no other motives of preference in their choice than talents and virtues." Article Twenty-third: "Instruction is the need of all, and society owes it equally to all its members." Article Thirty-second: "There is oppression, when a law violates the natural, civil, and political rights which it ought to guaranty. There is oppression, when the law is violated by the public functionaries in its application to individual cases."[1] Here again is the same constant testimony, reinforced by the accompanying report explaining the Constitution, where it is said: "All hereditary political power is at the same time an evident violation of natural equality and an absurd institution, since it supposes the inheritance of qualities proper for the discharge of a public function. Every exception to the common law made in favor of an individual is a blow struck at the rights of all." And in another part of the same report, "the sovereignty of the people, *equality among men,* the unity of the Republic," are declared to have been "the guiding principles always present in the formation of the Constitution."[2]

Next came the Constitution of June, 1793, announcing, in its second article, that the natural and imprescriptible rights of men are "*Equality,* liberty, security, property." In the next article we learn precisely what is meant by

[1] Moniteur, 1793, No. 49.

[2] Exposition des Principes et des Motifs du Plan de Constitution: Condorcet, Œuvres, Tom. XII. pp. 336, 413.

Equality, when it says, "All men are equal by nature *and before the law.*" [1] So just and captivating was this definition, which we encounter here for the first time, that it held its place through all the political vicissitudes of France, under the Directory, the Consulate, the Empire, the Restoration, and the Constitutional Government of Louis Philippe. It was a conquest which, when achieved, was never abandoned. Every Charter and Constitution certified to it. The Charter of Louis Philippe testifies as follows: "Frenchmen are *equal before the law,* whatever may be their titles and ranks." [2] Nor was its use confined to France. It passed into other constitutions, and Napoleon, who so often trampled on the rights of Equality, dictated to the Poles the declaration, that *all persons are equal before the law.* Thus the phrase is not only French, but Continental, although never English.

While recognizing this particular form of speech as more specific and satisfactory than the statement that all men are born equal, it is impossible not to be reminded that it finds a prototype in the ancient Greek language, where, according to Herodotus, "the government of the many has the most beautiful name of all, *ἰσονομία, isonomy,*" which may be defined *Equality before the Law.*[3] Thus, in an age when *Equality before the Law* was practically unknown, this remarkable language, by its comprehensiveness and flexibility, supplied a single word, not found in modern tongues, to express an

[1] Moniteur, 1793, No. 178.

[2] Annuaire Historique Universel pour 1830, Appendice, p. 48.

[3] Book III. § 80. The same idea prevailed with Demosthenes, who, in his First Oration against Aristogiton, pictured the laws as desiring "the just and the beautiful and the useful," which, when found, is set forth in a general ordinance, "equal and alike to all." — *Orat. I. contra Aristogit.*, § 5.

idea practically recognized only in modern times. Such a word in our own language, as the substitute for Equality, might have superseded criticism to which this declaration is exposed.

EQUALITY UNDER CONSTITUTION OF MASSACHUSETTS AND DECLARATION OF INDEPENDENCE.

THE way is now prepared to consider the nature of Equality, as secured by the Constitution of Massachusetts. The Declaration of Independence, which followed the French Encyclopedia and the political writings of Rousseau, announces among self-evident truths, "*that all men are created equal;* that they are endowed by their Creator with certain unalienable rights; that among these are life, liberty, and the pursuit of happiness." The Constitution of Massachusetts repeats the same truth in a different form, saying, in its first article: "*All men are born free and equal,* and have certain natural essential, and unalienable rights, among which may be reckoned the right of enjoying and defending their lives and liberties." Another article explains what is meant by Equality, saying: "No man, nor corporation or association of men, have any other title to obtain advantages, or particular and exclusive privileges, distinct from those of the community, than what arises from the consideration of services rendered to the public; and this title being in nature neither hereditary, nor transmissible to children, or descendants, or relations by blood, the idea of a man being born a magistrate, lawgiver, or judge is absurd and unnatural." This language, in its natural signification, condemns every form of inequality in civil and political institutions.

These declarations, though in point of time before the ampler declarations of France, may be construed in the light of the latter. Evidently, they seek to declare the same principle. They are declarations of *Rights;* and the language employed, though general in character, is obviously limited to those matters within the design of a declaration of *Rights.* And permit me to say, it is a childish sophism to adduce any physical or mental inequality in argument against Equality of Rights.

Obviously, men are not born equal in physical strength or in mental capacity, in beauty of form or health of body. Diversity or inequality in these respects is the law of creation. From this difference springs divine harmony. But this inequality is in no particular inconsistent with complete civil and political equality.

The equality declared by our fathers in 1776, and made the fundamental law of Massachusetts in 1780, was *Equality before the Law.* Its object was to efface all political or civil distinctions, and to abolish all institutions founded upon *birth.* "All men are *created* equal," says the Declaration of Independence. "All men are *born* free and equal," says the Massachusetts Bill of Rights. These are not vain words. Within the sphere of their influence, no person can be *created,* no person can be *born,* with civil or political privileges not enjoyed equally by all his fellow-citizens; nor can any institution be established, recognizing distinction of birth. Here is the Great Charter of every human being drawing vital breath upon this soil, whatever may be his condition, and whoever may be his parents. He may be poor, weak, humble, or black, — he may be of Caucasian, Jewish, Indian, or Ethiopian race, — he may be of French, German, English, or Irish extraction; but before the Constitution

of Massachusetts all these distinctions disappear. He is not poor, weak, humble, or black; nor is he Caucasian, Jew, Indian, or Ethiopian; nor is he French, German, English, or Irish; he is a MAN, the equal of all his fellow-men. He is one of the children of the State, which, like an impartial parent, regards all its offspring with an equal care. To some it may justly allot higher duties, according to higher capacities; but it welcomes all to its equal hospitable board. The State, imitating the divine justice, is no respecter of persons.

Here nobility cannot exist, because it is a privilege from birth. But the same anathema which smites and banishes nobility must also smite and banish every form of discrimination founded on birth, —

"Quamvis ille niger, quamvis tu candidus esses." [1]

EQUALITY BY LEGISLATION OF MASSACHUSETTS.

THE Legislature of Massachusetts, in entire harmony with the Constitution, has made no discrimination of race or color in the establishment of Common Schools.

Any such discrimination by the Laws would be unconstitutional and void. But the Legislature has been too just and generous, too mindful of the Bill of Rights, to establish any such privilege of *birth*. The language of the statutes is general, and applies equally to all children, of whatever race or color.

The provisions of the Law are entitled, *Of the Public Schools*,[2] meaning our Common Schools. To these we must look to ascertain what constitutes a Public School. Only those established in conformity with the Law can be legally such. They may, in fact, be more or less

[1] Virgil, Eclog. II. 16.

[2] Revised Statutes, Ch. 23.

public; yet, if they do not come within the terms of the Law, they do not form part of the beautiful system of our Public Schools, — they are not Public Schools, or, as I prefer to call them, Common Schools. The two terms are used as identical; but the latter is that by which they were earliest known, while it is most suggestive of their comprehensive character. A "common" in law is defined to be "*open ground equally used* by many persons"; and the same word, when used as an adjective, is defined by lexicographers as "belonging equally to many or to the public," thus asserting Equality.

If we examine the text of this statute, we shall find nothing to sustain the rule of exclusion which has been set up. The first section provides, that "in every town, containing fifty families or householders, there shall be kept in each year, at the charge of the town, by a teacher or teachers of competent ability and good morals, *one school* for the instruction of *children* in Orthography, Reading, Writing, English Grammar, Geography, Arithmetic, and Good Behavior, for the term of six months, or two or more such schools, for terms of time that shall together be equivalent to six months." The second, third, and fourth sections provide for the number of such schools in towns having respectively one hundred, one hundred and fifty, and five hundred families or householders. There is no language recognizing any discrimination of race or color. Thus, in every town, the schools, whether one or more, are "for the instruction of *children*" generally, — not children of any particular class or race or color, but children, — meaning the children of the town where the schools are.

The fifth and sixth sections provide a school, in certain cases, where additional studies are to be pursued,

which "shall be kept *for the benefit of all the inhabitants* of the town." The language here recognizes no discrimination among the children, but seems directly to exclude it.

In conformity with these sections is the peculiar phraseology of the memorable Colonial law of 1647, founding Common Schools, "to the end that learning may not be buried in the graves of our forefathers." This law obliged townships having fifty householders to "forthwith appoint one within their towns to teach *all such children as shall resort to him* to write and read."[1] Here again there is no discrimination among the children. *All* are to be taught.

On this legislation the Common Schools of Massachusetts have been reared. The section of the Revised Statutes,[2] and the statute of 1838,[3] appropriating small sums, in the nature of a contribution, from the School Fund, for the support of Common Schools among the Indians, do not interfere with this system. These have the anomalous character of all the legislation concerning the Indians. It does not appear, however, that separate schools are established by law among the Indians, nor that the Indians are in any way excluded from the Common Schools in their neighborhood.

I conclude, on this head, that there is but one Public School in Massachusetts. This is the Common School, equally free to all the inhabitants. There is nothing establishing an exclusive or separate school for any particular class, rich or poor, Catholic or Protestant, white or black. In the eye of the law there is but

[1] Charters and General Laws of the Colony and Province of Massachusetts Bay, p. 186.

[2] Chap. 23, sec. 68. [3] Chap. 154.

one class, where all interests, opinions, conditions, and colors commingle in harmony, — excluding none, therefore comprehending all.

EQUALITY UNDER JUDICIAL DECISIONS.

THE Courts of Massachusetts, in harmony with the Constitution and the Laws, have never recognized any discrimination founded on race or color, in the administration of the Common Schools, but have constantly declared the equal rights of all the inhabitants.

There are only a few decisions bearing on this subject, but they breathe one spirit. The sentiment of Equality animates them all. In the case of *The Commonwealth* v. *Dedham*, (16 Mass. R., 146,) while declaring the equal rights of all the inhabitants, in both Grammar and District Schools, the Court said: —

"The schools required by the statute are to be maintained for the benefit of the whole town, *as it is the wise policy of the law to give all the inhabitants equal privileges for the education of their children in the Public Schools.* Nor is it in the power of the majority to deprive the minority of this *privilege.* . . . . Every inhabitant of the town has a right to participate in the benefits of both descriptions of schools; and it is not competent for a town to establish a grammar school for the benefit of one part of the town to the exclusion of the other, although the money raised for the support of schools may be in other respects fairly apportioned."

Here is Equality from beginning to end.

In the case of *Withington* v. *Eveleth*, (7 Pick. R., 106,) the Court say they "are all satisfied that the power given to towns to determine and define the limits of school districts can be executed only by a geographical

division of the town for that purpose." A limitation of the district merely *personal* was held invalid. This same principle was again recognized in *Perry* v. *Dover*, (12 Pick. R., 213,) where the Court say, "Towns, in executing the power to form school districts, are bound so to do it as to include *every inhabitant* in some of the districts. They cannot lawfully omit any, and thus deprive them of *the benefits of our invaluable system of free schools.*" Thus at every point the Court has guarded the Equal Rights of all.

The Constitution, the Legislation, and the Judicial Decisions of Massachusetts have now been passed in review. We have seen what is contemplated by the Equality secured by the Constitution, — also what is contemplated by the system of Common Schools, as established by the laws of the Commonwealth and illustrated by decisions of the Supreme Court. The way is now prepared to consider the peculiarities in the present case, and to apply the principle thus recognized in Constitution, Laws, and Judicial Decisions.

SEPARATE SCHOOLS INCONSISTENT WITH EQUALITY.

It is easy to see that the exclusion of colored children from the Public Schools is a constant inconvenience to them and their parents, which white children and white parents are not obliged to bear. Here the facts are plain and unanswerable, showing a palpable violation of Equality. *The black and white are not equal before the law.* I am at a loss to understand how anybody can assert that they are.

Among the regulations of the Primary School Com-

mittee is one to this effect. "Scholars to go to the school nearest their residences. Applicants for admission to our schools (with the exception and provision referred to in the preceding rule) are especially entitled to enter the schools nearest to their places of residence." The exception here is "of those for whom special provision has been made" in separate schools, — that is, colored children.

In this rule — without the unfortunate exception — is part of the beauty so conspicuous in our Common Schools. It is the boast of England, that, through the multitude of courts, justice is brought to every man's door. It may also be the boast of our Common Schools, that, through the multitude of schools, education in Boston is brought to every *white* man's door. But it is not brought to every *black* man's door. He is obliged to go for it, to travel for it, to walk for it, — often a great distance. The facts in the present case are not so strong as those of other cases within my knowledge. But here the little child, only five years old, is compelled, if attending the nearest African School, to go a distance of two thousand one hundred feet from her home, while the nearest Primary School is only nine hundred feet, and, in doing this, she passes by no less than five different Primary Schools, forming part of our Common Schools, and open to white children, all of which are closed to her. Surely this is not *Equality before the Law.*

Such a fact is sufficient to determine this case. If it be met by the suggestion, that the inconvenience is trivial, and such as the law will not notice, I reply, that it is precisely such as to reveal an existing inequality, and therefore the law cannot fail to notice it. There is a maxim of the illustrious civilian, Dumoulin, a great

jurist of France, which teaches that even a trivial fact may give occasion to an important application of the law: "*Modica enim circumstantia facti inducit magnam juris diversitatem.*" Also from the best examples of our history we learn that the insignificance of a fact cannot obscure the grandeur of the principle at stake. It was a paltry tax on tea, laid by a Parliament where they were not represented, that aroused our fathers to the struggles of the Revolution. They did not feel the inconvenience of the tax, but they felt its oppression. They went to war for a principle. Let it not be said, then, that in the present case the inconvenience is too slight to justify the appeal I make in behalf of colored children for *Equality before the Law.*

Looking beyond the facts of this case, it is apparent that the inconvenience from the exclusion of colored children is such as to affect seriously the comfort and condition of the African race in Boston. The two Primary Schools open to them are in Belknap Street and Sun Court. I need not add that the whole city is dotted with schools open to white children. Colored parents, anxious for the education of their children, are compelled to live in the neighborhood of the schools, to gather about them, — as in Eastern countries people gather near a fountain or a well. The liberty which belongs to the white man, of choosing his home, is not theirs. Inclination or business or economy may call them to another part of the city; but they are restrained for their children's sake. There is no such restraint upon the white man; for he knows, that, wherever in the city inclination or business or economy may call him, there will be a school open to his children near his door. Surely this is not *Equality before the Law.*

If a colored person, yielding to the necessities of position, removes to a distant part of the city, his children may be compelled daily, at an inconvenience which will not be called trivial, to walk a long distance for the advantages of the school. In our severe winters this cannot be disregarded, in the case of children so tender in years as those of the Primary Schools. There is a peculiar instance of hardship which has come to my knowledge. A respectable colored parent became some time since a resident of East Boston, separated from the mainland by water. Of course there are Common Schools at East Boston, but none open to colored children. This parent was obliged to send his children, three in number, daily across the ferry to the distant African School. The tolls amounted to a sum which formed a severe tax upon a poor man, while the long way to travel was a daily tax upon the time and strength of his children. Every toll paid by this parent, as every step taken by the children, testifies to that inequality which I now arraign.

This is the conduct of a colored parent. He is well deserving of honor for his generous efforts to secure the education of his children. As they grow in knowledge they will rise and call him blessed; but at the same time they will brand as accursed that arbitrary discrimination of color in the Common Schools of Boston which rendered it necessary for their father, out of small means, to make such sacrifices for their education.

Here is a grievance which, independent of any stigma from color, calls for redress. It is an inequality which the Constitution and the Laws of Massachusetts repudiate. But it is not on the ground of inconvenience only that it is odious. And this brings me to the next head.

SEPARATE SCHOOLS ARE IN THE NATURE OF CASTE.

THE separation of children in the Schools, on account of race or color, is in the nature of *Caste*, and, on this account, a violation of Equality. The case shows expressly that the child was excluded from the school nearest to her dwelling — the number in the school at the time warranting her admission — "on the sole ground of color." The first Majority Report presented to the School Committee, and mentioned in the statement of facts, presents the grounds of this discrimination with more fulness, saying, "It is one of *races*, not of *colors* merely. The distinction is one which the All-wise Creator has seen fit to establish; and it is founded deep in the physical, mental, and moral natures of the two races. No legislation, no social customs, can efface this distinction."[1] Words cannot be chosen more apt than these to describe the heathenish relation of Caste.

This term, which has its prototype in Spanish and French, finds its way into English from the Portuguese *casta*, which signifies family, breed, race, and is generally used to designate any hereditary distinction, particularly of race. It is most often employed in India, and it is there that we must go to understand its full force. A recent English writer says, that it is "not only a distinction by birth, but is founded on the doctrine of an essentially distinct origin of the different races, which are thus unalterably separated."[2] This is the very ground of the Boston School Committee.

[1] Report to the Primary School Committee, June 15, 1846, on the Petition of Sundry Colored Persons for the Abolition of the Schools for Colored Children, p. 7.

[2] Roberts on Caste, p. 134.

This word is not now for the first time applied to the distinction between the white and black races. Alexander von Humboldt, speaking of the negroes in Mexico, characterizes them as a caste.[1] Following him, a recent political and juridical writer of France uses the same term to denote not only the distinctions in India, but those of our own country, especially referring to the exclusion of colored children from the Common Schools as among "the humiliating and brutal distinctions" by which their caste is characterized.[2] It is, then, on authority and reason alike that we apply this term to the hereditary distinction on account of color now established in the schools of Boston.

Boston is set on a hill, and her schools have long been the subject of observation, even in this respect. As far back as the last century, the French Consul here made a report on our "separate" school;[3] and De Tocqueville, in his masterly work, testifies, with evident pain, that the same schools do not receive the children of the African and European.[4] All this is only a reproduction of the Cagots in France, who for generations were put under the ban, — relegated to a corner of the church, as in a "negro pew," and even in the last resting-place, where all are equal, these wretched people were separated by a line of demarcation from the rest.[5] The Cagots are called an "accursed race," and this language may be applied to the African under our laws. Strange that here, under a State Constitution declaring the Equality of all men, we should follow the worst precedents and establish among

[1] Essai Politique sur le Royaume de la Nouvelle-Espagne, Liv. II. ch. 6.
[2] Charles Comte, Traité de Legislation, Tom. IV. pp. 129, 445.
[3] Grégoire, De la Littérature des Nègres, p. 177.
[4] Democracy in America, Vol. I. p. 461, Ch. XVIII. § 2.
[5] Michel, Histoire des Races Maudites, Tom. I. p. 3.

us a Caste. Seeing the discrimination in this light, we learn to appreciate its true character. In India, Brahmins and Sudras, from generation to generation, were kept apart. If a Sudra presumed to sit upon a Brahmin's carpet, his punishment was banishment. With similar inhumanity here, the black child who goes to sit on the same benches with the white is banished, not indeed from the country, but from the school. In both cases it is the triumph of Caste. But the offence is greater with us, because, unlike the Hindoos, we acknowledge that men are born equal.

So strong is my desire that the Court should feel the enormity of this system, thus legalized, not by the Legislature, but by an inferior local board, that I shall introduce an array of witnesses all testifying to the unchristian character of Caste, as it appears in India, where it is most studied and discussed. As you join in detestation of this foul institution, you will learn to condemn its establishment among our children.

I take these authorities from the work of Mr. Roberts to which I have already referred, "Caste opposed to Christianity," published in London in 1847. Time will not allow me to make comments. I can only quote the testimony and then pass on.

The eminent Bishop Heber, of Calcutta, characterizes Caste in these forcible terms: —

"*It is a system which tends, more than any else the Devil has yet invented, to destroy the feelings of general benevolence, and to make nine tenths of mankind the hopeless slaves of the remainder.*"

But this is the very system now in question here. Bishop Wilson, also of Calcutta, the successor of Heber, says: —

"The Gospel recognizes no such distinction as those of Castes, imposed by a heathen usage, bearing in some respects a supposed religious obligation, condemning those in the lower ranks to perpetual abasement, placing an immovable barrier against all general advance and improvement in society, cutting asunder the bonds of human fellowship on the one hand, and preventing those of Christian love on the other. Such distinctions, I say, the Gospel does not recognize. On the contrary, it teaches us that God 'hath made of one blood all the nations of men.'"

The same sentiment is echoed by Bishop Corrie, of Madras: —

"Thus Caste sets itself up as a judge of our Saviour himself. His command is, 'Condescend to men of low estate. Esteem others better than yourself.' 'No,' says Caste, 'do not commune with low men: consider yourself of high estimation. Touch not, taste not, handle not.' Thus Caste condemns the Saviour."

Here is the testimony of Rev. Mr. Rhenius, a zealous and successful missionary: —

"I have found Caste, both in theory and practice, to be diametrically opposed to the Gospel, which inculcates love, humility, and union; whereas Caste teaches the contrary. It is a fact, in those entire congregations where Caste is allowed the spirit of the Gospel does not enter; whereas in those from which it is excluded we see the fruits of the Gospel spirit."

Another missionary, Rev. C. Mault, follows in similar strain: —

"Caste must be entirely renounced; for it is a noxious plant, by the side of which the graces cannot grow; for facts demonstrate, that, where it has been allowed, Christianity has never flourished."

So also does the Rev. John McKenny, a Wesleyan missionary: —

"I have been upward of twelve years in India, and have directed much of my attention to the subject of Caste, and am fully of opinion that it is altogether contrary to the nature and principles of the Gospel of Christ, and therefore ought not to be admitted into the Christian Church."

So also the Rev. R. S. Hardy, a Wesleyan missionary, and author of "Notices of the Holy Land": —

"The principle of Caste I consider so much at variance with the spirit of the Gospel as to render impossible, where its authority is acknowledged, the exercise of many of the most beautiful virtues of our holy religion."

So also the Rev. D. J. Gorgerly, of the same Society: —

"I regard the distinction of Caste, both in its principles and operations, as directly opposed to vital godliness, and consequently inadmissible into the Church of Christ."

So also the Rev. W. Bridgnall, of the same Society: —

"I perfectly agree with a writer of respectable authority, in considering the institution of Caste as the most formidable engine that was ever invented for perpetuating the subjugation of men: so that, as a friend of humanity only, I should feel myself bound to protest against and oppose it; but in particular as a Christian, I deem it my obvious and imperative duty wholly to discountenance it, conceiving it to be utterly repugnant to all the principles and the whole spirit of Christianity. He who is prepared to support the system of Caste is, in my judgment, neither a true friend of man nor a consistent follower of Christ."

So also the Rev. S. Allens, of the same Society: —

"During a residence of more than nine years in Ceylon I have had many opportunities of witnessing the influence

of Caste on the minds of the natives, and I firmly believe it is altogether opposed to the spirit of Christianity; and it appears to me that its utter and speedy extinction cannot but be desired by every minister of Christ."

So also the Rev. R. Stoup, of the same Society:—

"From my own personal observation, during a four years' residence in Ceylon, I am decidedly of opinion that Caste is directly opposed to the spirit of Christianity, and consequently ought to be discouraged in every possible way."

I conclude these European authorities with the confirmation of Rev. Joseph Roberts, author of the work on Caste:—

"*We must in every place witness against it, and show that even Government itself is nurturing a tremendous evil, that through its heathen managers it is beguiled into a course which obstructs the progress of civilization,* which keeps in repulsion our kindlier feelings, which creates and nurses distinctions the most alien to all the cordialities of life, and which, more than any other thing, makes the distance so immense betwixt the governed and governors."

There is also the testimony of native Hindoos converted to Christianity, who denounce Caste as Jefferson denounced the despotism of Slavery. Listen to the voice of a Hindoo:—

"Caste is the stronghold of that principle of pride which makes a man think of himself more highly than he ought to think. Caste infuses itself into and forms the very essence of pride itself."

Another Hindoo testifies as follows:—

"I therefore regard Caste as opposed to the main scope, principles, and doctrines of Christianity; for either Caste must be admitted to be true and of divine authority, or

Christianity must be so admitted. If you admit Caste to be true, the whole fabric of Christianity must come down; for the nature of Caste and its associations destroy the first principles of Christianity. Caste makes distinctions among creatures where God has made none."

Another native expresses himself thus: —

"When God made man, his intention was, not that they should be divided, and hate one another, and show contempt, and think more highly of themselves than others. Caste makes a man think that he is holier than another, and that he has some inherent virtue which another has not. It makes him despise all those that are lower than himself in regard to Caste, which is not the design of God."

Still another native uses this strong language: —

"Yes, we regard Caste as part and parcel of idolatry, and of all heathen abominations, because it is in many ways contrary to God's Word, and directly contrary to God himself."

I hope that I have not occupied too much time with this testimony, which is strictly in point. There is not a word which is not plainly applicable to the present case. The witnesses are competent, and in their evidence, as in a mirror, may be seen the true character of the discrimination which I bring to judgment before this Court.

It will be vain to say that this distinction, though seeming to be founded on color, is in reality founded on natural and physical peculiarities independent of color. Whatever they may be, they are peculiarities of race; and any discrimination on this account constitutes the relation of Caste, in the most restricted sense of this term. Disguise it as you will, it is nothing but

this hateful, irreligious institution. But the words Caste and Equality are contradictory. They mutually exclude each other. Where Caste is, there cannot be Equality; where Equality is, there cannot be Caste.

Unquestionably there is a distinction between the Ethiopian and the Caucasian. Each received from the hand of God certain characteristics of color and form. The two may not readily intermingle, although we are told by Homer that Jupiter did not

> "disdain to grace
> The feasts of Ethiopia's blameless race."

One may be uninteresting or offensive to the other, precisely as individuals of the same race and color may be uninteresting or offensive to each other. But this distinction can furnish no ground for any discrimination before the law.

We abjure nobility of all kinds; but here is a nobility of the skin. We abjure all hereditary distinctions; but here is an hereditary distinction, founded, not on the merit of the ancestor, but on his color. We abjure all privileges of birth; but here is a privilege which depends solely on the accident whether an ancestor is black or white. We abjure all inequality before the law; but here is an inequality which touches not an individual, but a race. We revolt at the relation of Caste; but here is a Caste which is established under a Constitution declaring that all men are born equal.

Condemning Caste and inequality before the law, the way is prepared to consider more particularly the powers of the School Committee. Here it will be necessary to enter into details.

SCHOOL COMMITTEE HAVE NO POWER TO DISCRIMINATE ON ACCOUNT OF COLOR.

THE Committee charged with the superintendence of the Common Schools of Boston have no *power* to make any discrimination on account of race or color.

It has been seen already that this power is inconsistent with the Declaration of Independence, with the Constitution and Laws of Massachusetts, and with adjudications of the Supreme Court. The stream cannot rise higher than the fountain-head; and if there be nothing in these elevated sources from which this power can spring, it must be considered a nullity. Having seen that there is nothing, I might here stop; but I wish to show the shallow origin of this pretension.

Its advocates, unable to find it among express powers conferred upon the School Committee, and forgetful of the Constitution, where "either it must live or bear no life," place it among implied or incidental powers. The Revised Statutes provide for a School Committee "who shall have *the general charge and superintendence* of all the Public Schools" in their respective towns.[1] Another section provides that "the School Committee shall determine the number and qualifications of the scholars to be admitted into the school kept for the use of the whole town."[2] These are all the clauses conferring powers on the Committee.

From them no person will imply a power to defeat a cardinal principle of the Constitution. It is absurd to suppose that the Committee in general charge and superintendence of schools, and in determining the number and qualifications of scholars, may engraft upon

[1] Chap. 23, sec. 10. [2] Chap. 23, sec. 15.

the schools a principle of inequality, not only unknown to the Constitution and Laws, but in defiance of their letter and spirit. In the exercise of these powers they cannot put colored children to personal inconvenience greater than that of white children. Still further, they cannot brand a whole race with the stigma of inferiority and degradation, constituting them a Caste. They cannot in any way violate that fundamental right of all citizens, Equality before the Law. To suppose that they can do this would place the Committee above the Constitution. It would enable them, in the exercise of a brief and local authority, to draw a fatal circle, within which the Constitution cannot enter, — nay, where the very Bill of Rights becomes a dead letter.

In entire harmony with the Constitution, the law says expressly what the Committee shall do. Besides the general charge and superintendence, they shall "determine the *number* and *qualifications* of the scholars to be admitted into the school," — thus, according to a familiar rule of interpretation, excluding other powers: *Mentio unius est exclusio alterius.* The power to determine the "number" is easily executed, and admits of no question. The power to determine the "qualifications," though less simple, must be restricted to age, sex, and fitness, moral and intellectual. The fact that a child is black, or that he is white, cannot of itself be a qualification or a disqualification. Not to the skin can we look for the criterion of fitness.

It is sometimes pretended, that the Committee, in the exercise of their power, are intrusted with a discretion, under which they may distribute, assign, and classify all children belonging to the schools *according to their best judgment*, making, if they think proper, a discrimination

of race or color. Without questioning that they are intrusted with a discretion, it is outrageous to suppose that their discretion can go to this extent. The Committee can have no discretion which is not in harmony with the Constitution and Laws. Surely they cannot, in any mere discretion, nullify a sacred and dear-bought principle of Human Rights expressly guarantied by the Constitution.

REGULATIONS OF COMMITTEE MUST BE REASONABLE.

Still further, — and here I approach a more technical view of the subject, — it is an admitted principle, that the regulations and by-laws of municipal corporations must be *reasonable*, or they are inoperative and void. This has been recognized by the Supreme Court in two different cases, — *Commonwealth* v. *Worcester*, (3 Pick. R., 462,) and in Vandine's case (6 Pick. R., 187). In another case, *City of Boston* v. *Shaw*, (1 Met. R., 130,) it was decided that a by-law of Boston, prescribing a particular form of contribution toward the expenses of making the common sewers, was void for inequality and unreasonableness.

Assuming that this principle is applicable to the School Committee, their regulations and by-laws must be *reasonable*. Their discretion must be exercised in a reasonable manner. And this is not what the Committee or any other body of men think reasonable, but what is reasonable in the eye of the Law. It must be *legally reasonable*. It must be approved by the *reason* of the Law.

Here we are brought once more, in another form, to the question of the discrimination on account of color.

Is this *legally reasonable?* Is it reasonable, in the exercise of a just discretion, to separate descendants of the African race from white children merely in consequence of descent? Passing over those principles of the Constitution and those provisions of Law which of themselves decide the question, constituting as they do *the highest reason,* but which have been already amply considered, look for a moment at the educational system of Massachusetts, and it will be seen that practically no discrimination of color is made by Law in any part of it. A descendant of the African race may be Governor of the Commonwealth, and as such, with the advice and consent of the Council, may select the Board of Education. As Lieutenant-Governor, he may be *ex officio* a member of the Board. He may be Secretary of the Board, with the duty imposed on him by law of seeing "that *all* children in this Commonwealth, who depend upon Common Schools for instruction, may have the best education which those schools can be made to impart."[1] He may be member of any School Committee, or teacher in any Common School of the State. As legal voter, he can vote in the selection of any School Committee.

Thus, in every department connected with our Common Schools, throughout the whole hierarchy of their government, from the very head of the system down to the humblest usher in the humblest Primary School, and to the humblest voter, there is no distinction of color known to the law. It is when we reach the last stage of all, the children themselves, that the beautiful character of the system is changed to the deformity of Caste, as, in the picture of the ancient poet, what above was a lovely woman terminated below in a vile, unsightly

[1] General Laws of Massachusetts, 1837, Ch. 241, sec. 2.

fish. And all this is done by the School Committee, with more than necromantic power, in the exercise of a mere discretion.

It is clear that the Committee may classify scholars according to age and sex, for the obvious reasons that these distinctions are inoffensive, and that they are especially recognized as *legal* in the law relating to schools.[1] They may also classify scholars according to moral and intellectual qualifications, because such a power is necessary to the government of schools. But the Committee cannot assume, *a priori*, and without individual examination, that all of an *entire race* are so deficient in proper moral and intellectual qualifications as to justify their universal degradation to a class by themselves. Such an exercise of discretion must be unreasonable, and therefore illegal.

SEPARATE SCHOOL NOT AN EQUIVALENT FOR COMMON SCHOOL.

But it is said that the School Committee, in thus classifying the children, have not violated any principle of Equality, inasmuch as they provide a school with competent instructors for colored children, where they have advantages equal to those provided for white children. It is argued, that, in excluding colored children from Common Schools open to white children, the Committee furnish an *equivalent.*

Here there are several answers. I shall touch them briefly, as they are included in what has been already said.

1. The separate school for colored children is not

[1] Revised Statutes, Ch. 23, sec. 63.

one of the schools established by the law relating to Public Schools.[1] It is not a Common School. As such it has no legal existence, and therefore cannot be a *legal equivalent.* In addition to what has been already said, bearing on this head, I call attention to one other aspect. It has been decided that a town can execute its power to form School Districts only by geographical divisions of its territory, that there cannot be what I would call a *personal* limitation of a district, and that *certain individuals* cannot be selected and set off by *themselves* into a district.[2] The admitted effect of this decision is to render a separate school for colored children illegal and impossible in towns divided into districts. They are so regarded in Salem, Nantucket, New Bedford, and in other towns of this Commonwealth. The careful opinion of a learned member of this Court, who is not sitting in this case, given while at the bar,[3] and extensively published, is considered as practically settling this point.

But there cannot be one law for the country and another for Boston. It is true that Boston is not divided strictly into geographical districts. In this respect its position is anomalous. But if separate colored schools are illegal and impossible in the country, they must be illegal and impossible in Boston. It is absurd to suppose that this city, failing to establish School Districts, and treating all its territory as a single district, should be able to legalize a Caste school, which otherwise it could not do. Boston cannot do indirectly what other towns cannot do directly. This is the first answer to the allegation of equivalents.

[1] Revised Statutes, Ch. 23.

[2] Perry *v.* Dover, 12 Pick. R., 213.

[3] Hon. Richard Fletcher.

2. The second is that in point of fact the separate school is not an equivalent. We have already seen that it is the occasion of inconvenience to colored children, which would not arise, if they had access to the nearest Common School, besides compelling parents to pay an additional tax, and inflicting upon child and parent the stigma of Caste. Still further, — and this consideration cannot be neglected, — the matters taught in the two schools may be precisely the same, but a school exclusively devoted to one class must differ essentially in spirit and character from that Common School known to the law, where all classes meet together in Equality. It is a mockery to call it an equivalent.

3. But there is yet another answer. Admitting that it is an equivalent, still the colored children cannot be compelled to take it. Their rights are found in Equality before the Law; nor can they be called to renounce one jot of this. They have an equal right with white children to the Common Schools. A separate school, though well endowed, would not secure to them that precise Equality which they would enjoy in the Common Schools. The Jews in Rome are confined to a particular district called the Ghetto, and in Frankfort to a district known as the Jewish Quarter. It is possible that their accommodations are as good as they would be able to occupy, if left free to choose throughout Rome and Frankfort; but this compulsory segregation from the mass of citizens is of itself an *inequality* which we condemn. It is a vestige of ancient intolerance directed against a despised people. It is of the same character with the separate schools in Boston.

Thus much for the doctrine of Equivalents as a substitute for Equality.

DISASTROUS CONSEQUENCES OF POWER TO MAKE SEPARATE SCHOOLS.

In determining that the School Committee have no *power* to make this discrimination we are strengthened by another consideration. If the power exists in the present case, it cannot be restricted to this. The Committee may distribute all the children into classes, according to mere discretion. They may establish a separate school for Irish or Germans, where each may nurse an exclusive nationality alien to our institutions. They may separate Catholics from Protestants, or, pursuing their discretion still further, may separate different sects of Protestants, and establish one school for Unitarians, another for Presbyterians, another for Baptists, and another for Methodists. They may establish a separate school for the rich, that the delicate taste of this favored class may not be offended by the humble garments of the poor. They may exclude the children of mechanics, and send them to separate schools. All this, and much more, can be done in the exercise of that high-handed power which makes a discrimination on account of race or color. The grand fabric of our Common Schools, the pride of Massachusetts, — where, at the feet of the teacher, innocent childhood should come, unconscious of all distinctions of birth, — where the Equality of the Constitution and of Christianity should be inculcated by constant precept and example, — will be converted into a heathen system of proscription and Caste. We shall then have many different schools, representatives of as many different classes, opinions, and prejudices; but we shall look in vain for the true Common School of Massachusetts. Let it not be said that there is little danger

that any Committee will exercise a discretion to this extent. They must not be intrusted with the power. Here is the only safety worthy of a free people.

BY-LAW VOID.

THE Court will declare the by-law of the School Committee unconstitutional and illegal, although there are no express words of prohibition in the Constitution and Laws.

It is hardly necessary to say anything in support of this proposition. Slavery was abolished in Massachusetts, under the Declaration of Rights in our Constitution, without any specific words of abolition in that instrument, or in any subsequent legislation.[1] The same words which are potent to destroy Slavery must be equally potent against any institution founded on Inequality or Caste. The case of *Boston* v. *Shaw* (1 Metcalf, 130), to which reference has been already made, where a by-law of the city was set aside as unequal and unreasonable, and therefore void, affords another example of the power which I here invoke. But authorities are not needed. The words of the Constitution are plain, and it will be the duty of the Court to see that they are applied to the discrimination now waiting for judgment.

The Court might justly feel delicacy, if called to revise an act of the Legislature. But it is simply the action of a local committee that they are to overrule. They may also be encouraged by the circumstance that it is only to the schools of Boston that their decision can be applicable. Already the other towns have voluntarily banished Caste. Banishing it from the schools of Boston,

[1] Commonwealth *v.* Aves, 18 Pick. R., 210.

the Court will bring them into much-desired harmony with the schools of other towns, and with the whole system of Common Schools. I am unwilling to suppose that there can be any hesitation or doubt. If any should arise, there is a rule of interpretation which is plain. According to familiar practice, judicial interpretation is made always in favor of life or liberty. So here the Court should incline in favor of Equality, that sacred right which is the companion of those other rights. In proportion to the importance of this right will the Court be solicitous to vindicate and uphold it. And in proportion to the opposition which it encounters from prejudices of society will the Court brace themselves to this task. It has been pointedly remarked by Rousseau, that "it is precisely because the force of things tends always to destroy Equality that the force of legislation should always tend to maintain it."[1] In similar spirit, and for the same reason, the Court should always tend to maintain Equality.

ORIGIN OF SEPARATE SCHOOLS.

In extenuation of the Boston system, it is sometimes said that the separation of white and black children was originally made at the request of colored parents. This is substantially true. It appears from the interesting letter of Dr. Belknap, in reply to Judge Tucker's queries respecting Slavery in Massachusetts, at the close of the last century, that no discrimination on account of color existed then in the Common Schools of Boston. "The same provision," he says, "is made by the public for the education of the children of the blacks as for those of the

[1] Contrat Social, Liv. II. ch. 11.

whites. In this town the Committee who superintend the free schools have given in charge to the schoolmasters to receive and instruct black children as well as white." Dr. Belknap had "not heard of more than three or four who had taken advantage of this privilege, though the number of blacks in Boston probably exceeded one thousand."[1] Much I fear that the inhuman bigotry of Caste — sad relic of the servitude from which they had just escaped — was at this time too strong to allow colored children kindly welcome in the free schools, and that, from timidity and ignorance, they hesitated to take a place on the same benches with the white children. Perhaps the prejudice was so inveterate that they could not venture to assert their rights. In 1800 a petition from sixty-six colored persons was presented to the School Committee, requesting the establishment of a school for their benefit. Some time later, private munificence came to the aid of this work, and the present system of separate schools was brought into being.

These are interesting incidents belonging to the history of the Boston schools, but they cannot in any way affect the rights of colored people or the powers of the School Committee. These rights and these powers stand on the Constitution and Laws. Without adopting the suggestion of Jefferson, that one generation cannot by legislation bind its successors, all must agree that the assent of a few to an unconstitutional and illegal course nearly half a century ago, when their rights were imperfectly understood, cannot alter the Constitution and the Laws so as to bind their descendants forever in the thrall of Caste. Nor can the Committee derive from

[1] Coll. Mass. Hist. Soc., Vol. IV. pp. 206, 207.

this assent, or from any lapse of time, powers in derogation of the Constitution and the Rights of Man.

It is clear that the sentiments of the colored people have now changed. The present case, and the deep interest which they manifest in it, thronging the Court to watch this discussion, attest the change. With increasing knowledge they have learned to know their rights, and feel the degradation to which they are doomed. In them revives the spirit of Paul, even as when he demanded, "Is it lawful for you to scourge a man that is a Roman, and uncondemned?" Their present effort is the token of a manly character, which this Court will respect and cherish.

EVILS OF SEPARATE SCHOOLS.

But it is said that these separate schools are for the benefit of both colors, and of the Public Schools. In similar spirit Slavery is sometimes said to be for the benefit of master and slave, and of the country where it exists. There is a mistake in the one case as great as in the other. This is clear. Nothing unjust, nothing ungenerous, can be for the benefit of any person or any thing. From some seeming selfish superiority, or from the gratified vanity of class, short-sighted mortals may hope to draw permanent good; but even-handed justice rebukes these efforts and redresses the wrong. The whites themselves are injured by the separation. Who can doubt this? With the Law as their monitor, they are taught to regard a portion of the human family, children of God, created in his image, coequals in his love, as a separate and degraded class; they are taught practically to deny that grand revelation of Christianity, the

Brotherhood of Man. Hearts, while yet tender with childhood, are hardened, and ever afterward testify to this legalized uncharitableness. Nursed in the sentiments of Caste, receiving it with the earliest food of knowledge, they are unable to eradicate it from their natures, and then weakly and impiously charge upon our Heavenly Father the prejudice derived from an unchristian school. Their characters are debased, and they become less fit for the duties of citizenship.

The Helots of Sparta were obliged to intoxicate themselves, that by example they might teach the deformity of intemperance. Thus sacrificing one class to the other, both were injured, — the imperious Spartan and the abased Helot. The School Committee of Boston act with similar double-edged injustice in sacrificing the colored children to the prejudice or fancied advantage of the white.

A child should be taught to shun wickedness, and, as he is yet plastic under impressions, to shun wicked men. Horace was right, when, speaking of a person morally wrong, false, and unjust, he calls him black, and warns against him : —

"Hic niger est: hunc tu, Romane, caveto." [1]

The Boston Committee adopt the warning, but apply it not to the black in heart, but the black in skin. They forget the admonition addressed to the prophet: "The Lord said unto Samuel, *Look not on his countenance:* .... for the Lord seeth not as man seeth; for man looketh on the outward appearance, *but the Lord looketh on the heart.*" [2] The Committee look on the outward appearance, without looking on the heart, and thus fancy that they are doing right!

[1] Satiræ, Lib. I. iv. 85.

[2] 1 Samuel, xvi. 7.

Who can say that this does not injure the blacks? Theirs, in its best estate, is an unhappy lot. A despised class, blasted by prejudice and shut out from various opportunities, they feel this proscription from the Common Schools as a peculiar brand. Beyond this, it deprives them of those healthful, animating influences which would come from participation in the studies of their white brethren. It adds to their discouragements. It widens their separation from the community, and postpones that great day of reconciliation which is yet to come.

The whole system of Common Schools suffers also. It is a narrow perception of their high aim which teaches that they are merely to furnish an equal amount of knowledge to all, and therefore, provided all be taught, it is of little consequence where and in what company. The law contemplates not only that all shall be taught, but that *all* shall be taught *together*. They are not only to receive equal quantities of knowledge, but all are to receive it in the same way. All are to approach the same common fountain together; nor can there be any exclusive source for individual or class. The school is the little world where the child is trained for the larger world of life. It is the microcosm preparatory to the macrocosm, and therefore it must cherish and develop the virtues and the sympathies needed in the larger world. And since, according to our institutions, all classes, without distinction of color, meet in the performance of civil duties, so should they all, without distinction of color, meet in the school, beginning there those relations of Equality which the Constitution and Laws promise to all.

As the State derives strength from the unity and soli-

darity of its citizens without distinction of class, so the school derives strength from the unity and solidarity of all classes beneath its roof. In this way the poor, the humble, and the neglected not only share the companionship of the more favored, but enjoy also the protection of their presence, which draws toward the school a more watchful superintendence. A degraded or neglected class, if left to themselves, will become more degraded or neglected. "If any man have ears to hear, let him hear. . . . For he that hath, to him shall be given; and he that hath not, from him shall be taken even that which he hath."[1] The world, perverting the true sense of these words, takes from the outcast that which God gave him capacity to enjoy. Happily, our educational system, by the blending of all classes, draws upon the whole school that attention which is too generally accorded only to the favored few, and thus secures to the poor their portion of the fruitful sunshine. But the colored children, placed apart in separate schools, are deprived of this peculiar advantage. Nothing is more clear than that the welfare of classes, as well as of individuals, is promoted by mutual acquaintance. Prejudice is the child of ignorance. It is sure to prevail, where people do not know each other. Society and intercourse are means established by Providence for human improvement. They remove antipathies, promote mutual adaptation and conciliation, and establish relations of reciprocal regard. Whoso sets up barriers to these thwarts the ways of Providence, crosses the tendencies of human nature, and directly interferes with the laws of God.

[1] Mark, iv. 23, 25.

DUTY OF THE COURT.

May it please your Honors: Such are some of the things which I feel it my duty to say in this important cause. I have occupied much time, but the topics are not yet exhausted. Still, which way soever we turn, we are brought back to one single proposition, — *the Equality of men before the Law.* This stands as the mighty guardian of the colored children in this case. It is the constant, ever-present, tutelary genius of this Commonwealth, frowning upon every privilege of birth, every distinction of race, every institution of Caste. You cannot slight it or avoid it. You cannot restrain it. God grant that you may welcome it! Do this, and your words will be a "charter and freehold of rejoicing" to a race which by much suffering has earned a title to much regard. Your judgment will become a sacred landmark, not in jurisprudence only, but in the history of Freedom, giving precious encouragement to the weary and heavy-laden wayfarers in this great cause. Massachusetts, through you, will have fresh title to respect, and be once more, as in times past, an example to the whole land.

Already you have banished Slavery from this Commonwealth. I call upon you now to obliterate the last of its footprints, and to banish the last of the hateful spirits in its train. The law interfering to prohibit marriage between blacks and whites has been abolished by the Legislature. Railroads, which, imitating the Boston schools, placed colored people apart by themselves, are compelled, under the influence of an awakened public sentiment, to abandon this regulation, and to allow them the privileges of other travellers. Only

recently I have read that his Excellency, our present Governor,[1] took his seat in a train by the side of a negro. In the Caste Schools of Boston the prejudice of color seeks its final refuge. It is for you to drive it forth. You do well, when you rebuke and correct individual offences; but it is a higher office to rebuke and correct a vicious institution. Each individual is limited in influence; but an institution has the influence of numbers organized by law. The charity of one man may counteract or remedy the uncharitableness of another; but no individual can counteract or remedy the uncharitableness of an organized injury. Against it private benevolence is powerless. It is a monster to be hunted down by the public and the constituted authorities. And such is the institution of Caste in the Common Schools of Boston, which now awaits a just condemnation from a just Court.

One of the most remarkable expositions of Slavery is from the pen of Condorcet, in a note to the "Thoughts" of Pascal. Voltaire, in his later commentary on the same text, speaks of this "terrible" note, and adopts its conclusion. In the course of this arraignment, the philosopher, painting the character of the slave-master, says, "Such is the excess of his stupid contempt for this wretched race, that, returning to Europe, he is indignant to see them clothed as men and *placed by his side.*"[2] Thus the repugnance of the slave-master to see the wretched race *placed by his side* is adduced as crowning evidence of the inhumanity of Slavery. But this very repugnance has practical sanction among us, and you are to determine whether it shall be longer permitted.

[1] Hon. George N. Briggs.

[2] Pensées de Pascal, Notes de Condorcet et Voltaire, No. 109.

Slavery, in one of its enormities, is now before you for judgment. Hesitate not, I pray you, to strike it down. Let the blow fall which shall end its domination here in Massachusetts.

The civilization of the age joins in this appeal. I need not remind you that this prejudice of color is peculiar to our country. You may remember that two youths of African blood only recently gained the highest honors in a college at Paris, and on the same day dined with the King of the French, the descendant of St. Louis, at the Palace of the Tuileries. And let me add, if I may refer to my own experience, that at the School of Law in Paris I have sat for weeks on the same benches with colored pupils, listening, like myself, to the learned lectures of Degerando and Rossi; nor do I remember, in the throng of sensitive young men, any feeling toward them except of companionship and respect. In Italy, at the Convent of Palazzuolo, on the shores of the Alban Lake, amidst a scene of natural beauty enhanced by historical association, where I was once a guest, I have, for days, seen a native of Abyssinia, recently from his torrid home, and ignorant of the language spoken about him, mingling, in delightful and affectionate familiarity, with the Franciscan friars, whose visitor and scholar he was. Do I err in saying that the Christian spirit shines in these examples?

The Christian spirit, then, I again invoke. Where this prevails, there is neither Jew nor Gentile, Greek nor Barbarian, bond nor free, but all are alike. From this we derive new and solemn assurance of the Equality of Men, as an ordinance of God. Human bodies may be unequal in beauty or strength; these mortal cloaks of flesh may differ, as do these worldly garments;

these intellectual faculties may vary, as do opportunities of action and advantages of position; but amid all unessential differences there is essential agreement and equality. Dives and Lazarus are equal in the sight of God: they must be equal in the sight of all human institutions.

This is not all. The vaunted superiority of the white race imposes corresponding duties. The faculties with which they are endowed, and the advantages they possess, must be exercised for the good of all. If the colored people are ignorant, degraded, and unhappy, then should they be especial objects of care. From the abundance of our possessions must we seek to remedy their lot. And this Court, which is parent to all the unfortunate children of the Commonwealth, will show itself most truly parental, when it reaches down, and, with the strong arm of Law, elevates, encourages, and protects our colored fellow-citizens.

CHARACTER AND HISTORY OF THE LAW SCHOOL OF HARVARD UNIVERSITY.

REPORT OF THE COMMITTEE OF OVERSEERS, FEBRUARY 7, 1850.

IN BOARD OF OVERSEERS, February 1, 1849.

Voted, That Hon. PELEG SPRAGUE, Hon. SIMON GREENLEAF, CHARLES SUMNER, Esq., Hon. ALBERT H. NELSON, and PELEG W. CHANDLER, Esq., be a committee to visit the Law School during the ensuing year. [Hon. WILLIAM KENT was afterwards substituted for Mr. GREENLEAF, who declined.]

IN BOARD OF OVERSEERS, February 7, 1850.

Ordered, That the Report of the Committee appointed to visit the Law School be printed.

Attest,

ALEXANDER YOUNG, *Secretary.*

THE Committee appointed by the Overseers of Harvard University to visit the Law School performed that service November 7, 1849. Among their number present on the occasion was Hon. WILLIAM KENT, of New York, who gratified his associates by coming a long distance to join in this duty.

The attention of the Committee was first directed to the actual condition of the School, and its advantages as a place of legal education. Here there is occasion for lively satisfaction. The number of students is one hundred, assembled from all parts of the Union,

and constituting a representation of the whole country. Their attendance upon the lectures and other exercises, though entirely voluntary, is full and regular; while their industry, good conduct, and intelligent reception of instruction is a source of gratification to their professors.

Lectures were given, during the current term, by Professor PARKER, upon Equity Pleadings, Bailments, and Practice, — by Professor PARSONS, upon Blackstone's Commentaries, Admiralty Jurisdiction, Shipping, Bills and Notes, — and by Professor ALLEN, upon Real Law and Domestic Relations. In treating most of these branches, the professors employed text-books of acknowledged authority, to which the attention of the students was especially directed. They also examined the students in these books, and in leading cases illustrating the subject.

This system, which, with substantial uniformity, has been continued in the School since its earliest foundation, appears well adapted to instruction in the law. It is essential that the student should be directed to certain text-books, which he must study carefully, devotedly. Nor can he properly omit to go behind these, and verify them by the decided cases, letting no day pass without its fulfilled task. In this way he is prepared for examination, and enabled to appreciate the explanations and illustrations of the lecture-room, throwing light upon the text, and showing its application to practical cases. The labors of the student will qualify him to comprehend the labors of the instructor. Still further, examinations in the text-books, accompanied by explanations and illustrations, interest the student in the subject, and bring his mind in contact with that of his instructor.

These same purposes are promoted by the favorite exercise of moot-courts, held twice a week by the different professors in succession. A case involving some unsettled question of law is presented by four students, designated so long in advance as to allow time for careful preparation; and at the close of the arguments an opinion is pronounced by the presiding professor, commenting upon the arguments on each side, and deciding between them. These occasions are found to enlist the best attention, not only of those immediately engaged, but of the whole School, — while some of the efforts they call forth show distinguished research and ability. On this mimic field are trained forensic powers destined to be the pride and ornament of the bar.

The advantages for study afforded by the extensive library of the Law School should not be forgotten. This is separate from the Public Library of the University, and contains about fourteen thousand volumes. Here are all the American Reports, — the Statutes of the United States, as well as those of all the several States, — a regular series of all the English Reports, including the Year-Books, — the English Statutes, — the principal treatises on American and English law, — also a large body of works in the Scotch, French, German, Dutch, Spanish, Italian, and other foreign law, — and an ample collection of the best editions of the Roman or Civil Law, with the works of the most celebrated commentators upon that ancient text. This library is one of the largest and most valuable, relating to law, in the country. As an aid to study, it cannot be estimated too highly. Here the student may range at will through all the demesnes of jurisprudence. Here he may acquire knowledge of law-books, learning their true character

and value, which will be of incalculable service in his future labors. Whoso knows how to use a library possesses the very keys of knowledge. Next to knowing the law is knowing where to find it.

There is another advantage, of peculiar character, in the opportunity of kindly and profitable social relations among the students, and also between students and professors. Young men engaged in similar pursuits are instructors to each other. The daily conversation concerns their common studies, and contributes some new impulse. Mind meets mind, and each derives strength from the contact. The professor is also at hand. In the lecture-room, and also in private, he is ready for counsel and help. The students are not alone. At every step they find an assistant ready to conduct them through the devious and toilsome passes, and to remove the difficulties which throng the way. This twofold companionship of students with each other and with their appointed teachers is full of good influence, not only in the cordial intercourse it begets, but in the positive knowledge it diffuses, and its stimulating effect upon the mind.

In dwelling on the advantages of the Law School as a seat of legal education, the Committee therefore rank side by side with the lectures and exercises of the professors the profitable opportunities afforded by the library and the fellowship of persons engaged in the same pursuits, all echoing to the heart of the pupil, as from the genius of the place, constant words of succor, encouragement, and hope.

From the present prosperity of the School, the Committee are led to look back at its early beginning, to

observe its growth, and to commemorate with gratitude its benefactors.

It hardly need be added, that a Law School was not embraced by our forefathers in the original design of the College, and that it is a late graft upon the ancient stock. The College was planted at a time when law was not treated, even in England, as a part of academic instruction. The first settlers could not be expected to establish professorships unknown in the land from which they had parted; nor did there appear in those early days, or for some time later, any occasion for professional instruction. The law, as science, profession, or practical instrument of government, was scarcely recognized. Lawyers were not known as a class, nor was their business respected. Thomas Lechford, of Clement's Inn, who emigrated not long after the foundation of the College, hoping to gain a livelihood as attorney, being cautioned at a quarter court "not to meddle with controversies," went back to England. As the Colony grew, it gradually laid hold of the Common Law, and for some time before the Revolution claimed it as a birthright.

The history of the University Library exposes the poverty of the means for the study of the law in those early days. In its Catalogue, published in 1723, we find but *seven* volumes of Common Law. These are Spelman's Glossary, Pulton's Collection of Statutes, Keble's Statutes, Coke's First and Second Institutes, and two odd volumes of the Year-Books. Such were the means for the study of our law afforded by the public library, which Cotton Mather, sometime before the publication of this catalogue, described as "the best furnished that could be shown anywhere in all the American regions."

Since books are the instruments of learning, it follows, if these were wanting, that the study of the law could make little advance. Happily this is now changed.

The first professorship of law in the University was established in 1815, upon a foundation partly supplied by an ancient devise of ISAAC ROYALL, Esq., — a munificent gentleman of ample fortune, who, being connected by blood and marriage, as well as by political opinions, with the principal royalists of Massachusetts, forsook the country with them at the commencement of the Revolution, and died at Kensington, in England, in October, 1781. Though an exile, he did not forget the land he had left. Thither before death his "heart untravelled fondly turned." By his will, recorded at the Probate Office in Boston, he devised to Medford, in Massachusetts, where he had resided, certain lands in Granby, for the support of schools. The residue of his estate in that town, and other lands in the County of Worcester, he devised to the Overseers and Corporation of Harvard College, "to be appropriated towards the endowing *a Professor of Laws in the said College*, or a Professor of Physic and Anatomy, whichever the said Overseers and Corporation shall judge to be best for the benefit of the said College." The capital, with its accumulation, from the property thus devised, is $ 7,943, yielding an annual income of about four hundred dollars. It is believed that the University and the lovers of the law are indebted to the late Hon. JOHN LOWELL, while a member of the Corporation, for calling these funds — yet unappropriated to either object of the devise — from their sleep in the treasury, by procuring the establishment of a professorship of law, which was ordered, for the present, to bear the name of *Royall*, in

honor of him whose will in this regard was now first executed. This was in 1815. The residue of the funds for its support have been supplied by the University, mainly from fees paid by students of law. The Hon. Isaac Parker, late Chief Justice of this Commonwealth, was the first professor.

In 1817 the Hon. Asahel Stearns was placed upon another foundation, established by the University. The statutes of this professorship required him to open and keep a school in Cambridge for the instruction of graduates and of others prosecuting the study of the law. Besides prescribing to his pupils a course of study, it was made his duty to examine and confer with them upon their studies, to read to them a course of lectures, and generally to act the part of tutor, so as to improve their minds and assist their acquisitions. From this time may be dated the establishment of the Law School in the University.

Chief-Justice Parker never resided at Cambridge, but, in the performance of his duties as professor, every summer read lectures to the Law School and the senior class of undergraduates. These were of an elementary nature, adapted to youthful minds, — the audience being for the most part undergraduates, — and were characterized by that free and flowing style which marks the judicial opinions of this eminent Judge. They comprised a view of the Constitutions of the United States and of Massachusetts, with the early juridical history of New England, and the origin of its laws and institutions. Professor Stearns, who resided in Cambridge, was occucupied immediately with the duties of instruction. He was accustomed to hear recitations in the more important text-books, to preside in moot-courts, and to read lec-

tures on interesting titles of law. His valuable work on Real Actions, so well known to lawyers, was prepared in the discharge of his duties as professor, and read to his pupils in a course of lectures. The first edition was dedicated by the author "To the Law Students of Harvard University, as a testimony of his earnest desire to aid them in the honorable and laborious study of American jurisprudence."

The number of students at this period was small. From 1817 to 1829 the largest class for any single year was eighteen, and the average annual number was not more than thirteen. The first important step, however, was taken. Law was admitted within the circle of University studies, while, by the learning and reputation of its professors, the cause of legal education was commended, and the idea of a Law School was shown to be practicable.

On the resignation of Chief-Justice Parker and Professor Stearns a new epoch in the history of the School began. The Hon. NATHAN DANE, in 1829, emulating the example of Viner in England, applied the profits of his extensive Abridgment and Digest of American Law to the foundation of a new professorship, still called from his name; and at his request, the late JOSEPH STORY, then a resident of Salem, and an Associate Justice of the Supreme Court, was appointed the first professor. In his communication to the University, making this endowment, the venerable founder marked out the proposed duties as follows: "It shall be the duty of the professor to prepare and deliver, and to revise for publication, a course of lectures on the five following branches of law and equity, equally in force in all parts of our Federal Republic, namely, the Law of Nature, the Law

of Nations, Commercial and Maritime Law, Federal Law, and Federal Equity, in such wide extent as the same branches now are, and from time to time shall be, administered in the Courts of the United States, but in such compressed form as the professor shall deem proper, and so to prepare, deliver, and revise lectures thereon as often as the said Corporation shall think proper." The original endowment by Mr. Dane was $10,000, to which on his death was added $5,000, making the sum-total $15,000. Mr. Justice Story removed to Cambridge in 1829, commencing his new career as Dane Professor of Law with an inaugural discourse, where the honorable nature of legal studies, the arduous labors required in their pursuit, and the duties upon which he was entering, were reviewed with singular power and beauty. At the same time, JOHN HOOKER ASHMUN, Esq., a lawyer of remarkable acuteness and maturity, who, though young, had shown already the capacity of a jurist, was associated with him as Royall Professor of Law.

From the exertions of the new professors the Law School received fresh impulse. The number of students increased, and the fame of the institution was extended. Professor Story, though much absent in the discharge of his judicial duties, yet found time for active part in teaching. He presided in moot-courts and lecture-rooms, and, by earnest encouragement and profuse instruction, not less than by illustrious example, raised the classes to unwonted ardor. He continued in this sphere, giving and receiving happiness, for a period of sixteen years, when, as age advanced, desiring to lay down some of his cares, he proposed to resign his seat on the bench, and dedicate the remainder of his days to his professorship. As he was about to

make this change he was arrested by death, September 10, 1845.

Professor Ashmun had already fallen by his side, much regretted, at the early age of thirty-three. Besides moot-courts, examinations in text-books, and oral expositions of the law, this learned teacher occasionally read written lectures. Among these was a valuable course on Medical Jurisprudence, Equity, and the Action of Assumpsit. His place was supplied in 1833 by an eminent jurist, SIMON GREENLEAF, Esq., who labored for a long period with rare success, beloved by a large circle of grateful pupils, and by his associates in instruction, till 1848, when he was compelled by ill-health to resign his connection with the Law School. Among his distinguished labors, in the discharge of his duties as professor, is a work on the Law of Evidence, which is now a manual in the courts of our country, and one of the classics of the Common Law.

On the death of Professor Story, Professor Greenleaf was made Dane Professor. Hon. WILLIAM KENT, of New York, occupied for a year the place of Royall Professor, when he felt constrained, by circumstances beyond his control, to leave Cambridge. Since then Hon. THEOPHILUS PARSONS has been Dane Professor, and Hon. JOEL PARKER, late Chief Justice of New Hampshire, Royall Professor. Hon. FRANKLIN DEXTER has lectured for a brief period on the Constitution of the United States and the Law of Nations, and Hon. LUTHER S. CUSHING on Parliamentary Law and Criminal Law. Hon. FREDERICK H. ALLEN, late a judge in Maine, at present University Professor, without any permanent foundation, is coöperating with Professor Parsons and Professor Parker in the general duties of instruction.

In reviewing the history of the School, the Committee, while gratefully remembering all its instructors, are impressed by the long and important labors of STORY. In the meridian of his fame as judge, he became a practical teacher of jurisprudence, and lent to the University the lustre of his name. Through him the Dane Professorship has acquired a renown placing it on the same elevation with the Vinerian Professorship at Oxford, to which we are indebted for the Commentaries of Sir William Blackstone. These "twin stars," each in its own hemisphere, shine rival glories. Nor is this the only parallel; for Viner, like our Dane, endowed the professorship which bears his name from the profits of his immense Abridgment of the Law. In the performance of his duties, Professor Story prepared and published the most important series of juridical works which has latterly appeared in the English language, embracing a comprehensive treatise on the Constitution of the United States, a masterly exposition of that portion of International Law known as the Conflict of Laws, and Commentaries on Equity Jurisprudence, Equity Pleading, and various branches of Commercial Law.

The extent of his labors, and their influence in building up the School, appear in an interesting passage of his last will and testament, bearing date January 2, 1842. After bequeathing to the University several valuable pictures, busts, and books, he proceeds as follows: "I ask the President and Fellows of Harvard College to accept these as memorials of my reverence and respect for that venerable institution, at which I received my education. I hope it may not be improper for me here to add, that I have devoted myself, as Dane Professor, for the last

thirteen years,[1] to the labors and duties of instruction in the Law School, and have always performed equal duties and to an equal amount with my excellent colleagues, Mr. Professor Ashmun and Mr. Professor Greenleaf, in the Law School. When I came to Cambridge, and undertook the duties of my professorship, there had not been a single law student there for the preceding year. There was no law library, but a few old and imperfect books being there. The students have since increased to a large number, and for six years last past have exceeded one hundred a year. The Law Library now contains about six thousand volumes, whose value cannot be deemed less than twenty-five thousand dollars. My own salary has constantly remained limited to one thousand dollars,—a little more than the interest of Mr. Dane's donations. I have never asked or desired an increase thereof, as I was receiving a suitable salary as a Judge of the Supreme Court of the United States,—while my colleagues have very properly received a much larger sum, and of late years more than double my own. Under these circumstances, I cannot but feel that I have contributed towards the advancement of the Law School a sum out of my earnings, which, with my moderate means, will be thought to absolve me from making, what otherwise I certainly should do, a pecuniary legacy to Harvard College, for the general advancement of literature and learning therein."

From the books of the Treasurer it appears that the sums received from students in the Law School during the sixteen years of his professorship amounted to $105,000. Of this amount, only $47,800 was disbursed in salaries and current expenses. The balance, amount-

[1] His will being dated three years before his death.

ing to $ 57,200, is represented by the following items, namely: —

Books purchased for the Library and for students, including about $ 1,950 for binding, and deducting amount received for books sold	$ 29,000
Enlargement of the Hall, containing the library and lecture-rooms, in 1844 – 45	12,700
Fund remaining to the credit of the School in August, 1845	15,500
	$ 57,200

Thus the Law School, at the time of Professor Story's death, actually possessed, independent of the somewhat scanty donations by Mr. Royall and Mr. Dane, funds and other property, including a large library and a commodious edifice, amounting to upwards of *fifty-seven thousand dollars,* all earned during Professor Story's term of service. As during this period he declined a larger annual salary than $ 1,000, and as his high character and the attraction of his name contributed to swell the income of the School, it is evident that a considerable portion of this large sum may justly be regarded as the fruit of his bountiful labors contributed to the University.

The Committee, while calling attention to the extent of pecuniary benefaction which the Law School has received from Professor Story, feel it a duty to urge upon the Government of the University the recognition of this benefaction in some suitable form. The name of Royall, given to one of the professorships, keeps alive the memory of his early generosity. The name of Dane, given to the professorship on which Story taught, and sometimes also to the edifice containing the library and lecture-rooms, and then to the Law School itself, attests,

with triple academic voice, a well-rewarded donation. But the contributions of Royall and Dane combined, important as they were, and justly worthy of honorable mention, do not equal what was contributed by Story. At the present moment Story must be regarded as the largest pecuniary benefactor of the Law School, and one of the largest pecuniary benefactors of the University. In this respect he stands before Hollis, Alford, Boylston, Hersey, Bowdoin, Erving, Eliot, Smith, M'Lean, Perkins, and Fisher. His contributions have this additional peculiarity, that they were munificently afforded from daily earnings, — not after death, but during life; so that he became, as it were, the executor of his own will. In justice to the dead, as an example to the living, and in conformity with established usage, the University should enroll his name among its founders, and in some fit manner inscribe it upon the school which he helped to rear.

Three different courses occur to the Committee. The edifice containing the library and lecture-rooms may be called after him, *Story Hall.* Or the branch of the University devoted to law may be called *Story Law School,* as the other branch of the University devoted to science, in gratitude to a distinguished benefactor, is called *Lawrence Scientific School.* Or a new and permanent professorship in the Law School may be created, with his name.

If the last suggestion should find favor, the Committee recommend that the professorship be of *Commercial Law and the Law of Nations.* It is well known to have been the desire of Professor Story, often expressed, in view of the increasing means of the Law School, and the corresponding demands for education in the law,

that professorships of both these branches should be established. In his opinion that of Commercial Law was most needed. His own preëminence in this department appears in his works, and especially in numerous judicial opinions. His interest in it was attested in conversation with one of this Committee only a few days before his death. Hearing that it was proposed by merchants of Boston, on his resignation of the judicial seat he had held for nearly thirty-four years, to cause his statue in marble to be erected, he said: "If Boston merchants wish to do me honor in any way, on my leaving the bench, let it not be by a statue, but by founding in the Law School a professorship of Commercial Law." With these generous words he embraced at once his favorite law and his favorite University.

The subject of Commercial Law is of great and growing importance in the multiplying relations of mankind. Every new tie of commerce gives new occasion for its application. Besides the general principles of the Law of Contracts, it comprehends the Law of Bailments, Agency, Partnership, Bills of Exchange and Promissory Notes, Shipping, and Insurance, — branches of inexpressible interest to lawyers, merchants, and indeed to every citizen. The main features of this law are common to all commercial nations; they are recognized with substantial uniformity, whether at Boston, London, or Calcutta, at Hamburg, Marseilles, or Leghorn. In this respect they may be regarded as part of the *Private* Law of Nations. They would be associated naturally with the Public Law of Nations, — embracing, of course, the Law of Admiralty, and that other branch, which it is hoped will remain forever a dead letter, the Law of Prize.

The Committee believe that all who become acquainted with this statement will agree that something should be done to commemorate the obligations of the University to one of its most eminent professors and largest pecuniary benefactors. They have ventured suggestions as to the manner in which this may be accomplished, not with any particular confidence in their own views, but simply as a mode of opening the subject, and bringing it to attention. In dwelling on the propriety of a new and permanent professorship, they would not be understood as expressing a preference for this form of acknowledgment. It may be a question, whether the services of Professor Story, important in every respect, shedding upon the Law School a lasting fame, and securing to it pecuniary competence, an extensive library, and a commodious hall, can be commemorated with more appropriate academic honors than by giving his name to that department in the University of which he was the truest founder. The world, anticipating all formal action of the University, has already placed the Law School under the guardianship of his name. It is by the name of STORY that this seat of legal education has become known wherever jurisprudence is cultivated as a science.

For the Committee.

CHARLES SUMNER.

TO THE OVERSEERS OF HARVARD UNIVERSITY.

STIPULATED ARBITRATION, OR A CONGRESS OF NATIONS, WITH DISARMAMENT.

ADDRESS TO THE PEOPLE OF THE UNITED STATES, FEBRUARY 22, 1850.

THE history of the Peace Movement, recounted in the Address on the War System of the Commonwealth of Nations, terminates at the date of that Address, anterior to the Congress at Paris, called the Second General Peace Congress, on the 22d, 23d, and 24th of August, 1849. This Congress is briefly characterized in the Address below. There is a report of its proceedings, where may be read the able speeches and letters by which the cause was vindicated. It was arranged in Europe that the next year should witness a similar Congress, and Frankfort-on-the-Main was selected for the place of meeting, both from its central situation and the sympathy felt in the movement by leading minds of Germany.

In the United States a Committee was appointed, with Mr. Sumner as Chairman, to obtain a proper representation. The following Address was put forth by the Committee. But the question ceased to be pressed in Europe, under the influence of the prevailing reaction, while in our country it was overshadowed by Slavery, to which the general attention was now directed. It was often remarked, "One evil at a time"; and thus the Peace Cause was postponed.

TO THE PEOPLE OF THE UNITED STATES.

THE month of August last witnessed at Paris a Congress or Convention of persons from various countries, to consider what could be done to promote the sacred cause of Universal Peace. France, Germany, Belgium, England, and the United States were represented by large numbers of men eminent in business,

politics, literature, religion, and philanthropy. The Catholic Archbishop of Paris, and the eloquent Protestant preacher, M. Athanase Coquerel, — Michel Chevalier, Horace Say, and Frédéric Bastiat, distinguished political economists, — Émile de Girardin, the most important political editor of France, — Victor Hugo, illustrious in literature, — Lamartine, whose glory it is to have turned the recent French Revolution, at its beginning, into the path of Peace, — and Richard Cobden, the world-renowned British statesman, the unapproached model of an earnest, humane, and practical Reformer, — all these gave to this august assembly the sanction of their presence or approbation. Victor Hugo, on taking the chair as President, in an address of persuasive eloquence, shed upon the occasion the illumination of his genius, — while Mr. Cobden, participating in all the proceedings, impressed upon them his characteristic common sense.

The Congress adopted, with entire unanimity, a series of resolutions, asserting the duty of governments to submit all differences between them to Arbitration, and to respect the decisions of the Arbitrators; also asserting the necessity of a general and simultaneous disarming, not only as the means of reducing the expenditure absorbed by armies and navies, but also of removing a permanent cause of disquietude and irritation. The Congress condemned all loans and taxes for wars of ambition or conquest. It earnestly recommended the friends of Peace to prepare public opinion, in their respective countries, for the formation of a Congress of Nations, to revise the existing International Law, and to constitute a High Tribunal for the decision of controversies among nations. In support of these objects,

the Congress solemnly invoked the representatives of the press, so potent to diffuse truth, and also all ministers of religion, whose holy office it is to encourage good-will among men.

The work thus begun has been continued since. In England and the United States large public meetings have welcomed the returning delegates. Men have been touched by the grandeur of the cause. Not in the aspirations of religion and benevolence only, but in the general heart and mind, has it found reception, filling all who embrace it with new confidence in the triumph of Christian truth.

Another Congress or Convention has been called to meet at Frankfort-on-the-Main, in the month of August next, to do what is possible, by mutual counsels and encouragement, to influence public opinion, and to advance still further the cause which has been so well commended by the Congress at Paris.

To promote the objects of this Congress generally, and particularly to secure the attendance of a delegation from the United States, in number and character not unworthy of the occasion, a Committee, representing friends of Peace throughout the country, various in opinion, has been appointed, under the name of "PEACE CONGRESS COMMITTEE FOR THE UNITED STATES." This Committee now appeal to their fellow-citizens for coöperation in this work.

The Committee hope, in the first place, to interest our Government at Washington in the objects contemplated by the proposed Congress. As this can be done only through the prompting of the people, they recommend petitions like the following: —

"PETITION FOR PEACE.

"*To the Honorable Senate (or H. of R.) of the United States.*

"The undersigned, inhabitants (or citizens, or legal voters) of ———, in the State of ———, deploring the manifold evils of War, and believing it possible to supersede its alleged necessity, as an Arbiter of Justice among Nations, by the timely adoption of wise and feasible substitutes, respectfully request your honorable body to take such action as you may deem best in favor of Stipulated Arbitration, or a Congress of Nations, for the accomplishment of this most desirable end."

As the number of delegates to the proposed Congress is not limited, the Committee hope to see States, Congressional Districts, Towns, and other bodies represented. Every delegate will be a link between the community, large or small, from which he comes, and the cause of Universal Peace.

The Committee recommend a State Convention in each State to choose a State Committee, and also two delegates at large from the State;

Also a Convention in each Congressional District to choose a delegate;

Also public meetings in towns, and other smaller localities, to explain the objects of the Congress, and to choose local delegates.

The Committee also recommend to the religious and literary bodies of the country, as churches and colleges, to send delegates to the Congress.

In making this appeal, the Committee desire to impress upon their fellow-citizens the practical character of the present movement. Instead of the *custom* or *institution* of War, now recognized by International

Law, as the Arbiter of Justice between Nations, they propose, by the consent of nations, to substitute a System of Arbitration, or a permanent Congress of Nations. With this change will necessarily follow a general disarming down to that degree of force required for internal police. The barbarous and incongruous War System, which now encases our Christian civilization as with a cumbrous coat of mail, will be destroyed. The enormous means, thus released from destructive industry and purposes of hate, will be appropriated to productive industry and purposes of beneficence. To help this consummation who will not labor?

The people in every part of the country, East and West, North and South, of all political parties and all religious sects, are now invited to join in this endeavor. So doing, while confident of the blessing of God, they will become fellow-laborers of wise and good men in other lands, and will secure to themselves the inexpressible satisfaction of aiding the advent of that happy day when Peace shall be *organized* among nations.

By order of the Peace Congress Committee for the United States.

CHARLES SUMNER, *Chairman.*

ELIHU BURRITT, } *Secretaries.*
AMASA WALKER, }

BOSTON, February 22, 1850.

OUR IMMEDIATE ANTISLAVERY DUTIES.

Speech at a Free-Soil Meeting at Faneuil Hall, November 6, 1850.

This speech was made a few days before the annual election in Massachusetts, and just after the passage of the Fugitive Slave Bill. As the first open denunciation of this measure, it awakened much feeling on both sides. All who felt strongly against Slavery were grateful.

It is sometimes said to have made Mr. Sumner Senator. More than anything else, it determined his selection by the Free-Soil party shortly afterwards as their candidate. On the other hand, it was often pronounced "treasonable," and in subsequent discussions at Washington, sometimes in newspapers and repeatedly in the Senate, it was employed to point the personalities of slave-masters and their allies. It was called the "Mark Antony speech." It takes the ground to which Mr. Sumner constantly adhered, that the "Fugitive Slave Bill," as he always insisted upon calling it, — refusing to call it Law, — was absolutely unconstitutional in all respects, — not only, according to the old language of the law, "to a certain intent in general," but also "to a certain intent in every particular." Such an enactment could not be treated as law; and Mr. Sumner insisted that good citizens should refuse to it all support, as our fathers refused all support to the British Stamp Act. His effort and hope were to create a public sentiment which would render its enforcement impossible.

In all times there has been something in the human conscience which forbade certain things, even though ordained by law. "A curse on him who is not enough an honest man and enough a man of courage to be capable of the crime of hospitality towards a proscribed person!" Such is the exclamation of an eloquent historian of the French Revolution, after reciting the proposition of Saint-Just, kindred to the requirement of the Fugitive Slave Bill.[1] Guizot, in his Memoirs, records an illustrative incident. Queen Hortense, mother of Louis Napoleon, at a time when all of her family were excluded from France, suddenly arrived in Paris, when, seeing Casimir Périer, Prime-Minister of Louis

[1] Louis Blanc, Histoire de la Révolution Française, Tom. X. p. 316.

Philippe, she began: "I know, Sir, that I have violated a law; you have the right to arrest me; that would be just." "*Legal,* Madame," said the Minister, "but not *just.*"[1]

At the pending election there was what was called a coalition between the Free-Soilers and Democrats, in the choice of State Senators and Representatives, with the understanding that the State officers chosen by the Legislature should be Democrats, and the United States Senator a Free-Soiler. But nothing was said at the time about candidates.

The meeting at Faneuil Hall was large and enthusiastic. It was organized by the choice of William B. Spooner, Esq., President, — Edward A. Raymond, William Washburn, Henry I. Bowditch, William Bates, Ebenezer Atkins, William Dall, Caleb Gill, Theodore D. Cook, Joseph Southwick, Ephraim Allen, Richard Hildreth, and Robert E. Apthorp, Vice-Presidents, — William F. Channing and Charles List, Secretaries. On taking the chair, Mr. Spooner addressed the meeting. Dr. Luther Parks then read a series of resolutions. Mr. Sumner followed, and was received with much enthusiasm. His speech is printed with the interruptions reported at the time.

MR. CHAIRMAN, AND YOU, MY FELLOW-CITIZENS: —

COLD and insensible must I be, not to be touched by this welcome. I thank you for the cause, whose representative only I am. It is the cause which I would keep ever foremost, and commend always to your support.

In a few days there will be an important political election, affecting many local interests. Not by these have I been drawn here to-night, but because I would bear my testimony anew to that Freedom which is above all these. And here, at the outset, let me say, that it is because I place Freedom above all else that I cordially concur in the different unions or combinations throughout the Commonwealth, — in Mr. Mann's District, of Free-Soilers with Whigs, — also in Mr. Fowler's District, of Free-Soilers with Whigs, — and generally, in Senatorial Districts, of Free-Soilers with Democrats.

[1] Guizot, Mémoires pour servir à l'Histoire de mon Temps, Tom. II. p. 219.

By the first of these two good men may be secured in Congress, while by the latter the friends of Freedom may obtain a controlling influence in the Legislature of Massachusetts during the coming session, and thus advance our cause. [*Applause.*] They may arbitrate between both the old parties, making Freedom their perpetual object, and in this way contribute more powerfully than they otherwise could to the cause which has drawn us together. [*Cheers.*]

Leaving these things, so obvious to all, I come at once to consider urgent duties at this anxious moment. To comprehend these we must glance at what Congress has done during its recent session, so long drawn out. This I shall endeavor to do rapidly. "Watchman, what of the night?" And well may the cry be raised, "What of the night?" For things have been done, and measures passed into laws, which, to my mind, fill the day itself with blackness. [*"Hear! hear!"*]

And yet there are streaks of light — an unwonted dawn — in the distant West, out of which a full-orbed sun is beginning to ascend, rejoicing like a strong man to run a race. By Act of Congress California has been admitted into the Union with a Constitution forbidding Slavery. For a measure like this, required not only by simplest justice, but by uniform practice, and by constitutional principles of slaveholders themselves, we may be ashamed to confess gratitude; and yet I cannot but rejoice in this great good. A hateful institution, thus far without check, travelling westward with the power of the Republic, is bidden to stop, while a new and rising State is guarded from its contamination. [*Applause.*] Freedom, in whose hands is the divining-rod of magical

power, pointing the way not only to wealth untold, but to every possession of virtue and intelligence, whose presence is better far than any mine of gold, has been recognized in an extensive region on the distant Pacific, between the very parallels of latitude so long claimed by Slavery as a peculiar home. [*Loud plaudits.*]

Here is a victory, moral and political: moral, inasmuch as Freedom secures a new foothold where to exert her far-reaching influence; political, inasmuch as by the admission of California, the Free States obtain a majority of votes in the Senate, thus overturning that *balance of power* between Freedom and Slavery, so preposterously claimed by the Slave States, in forgetfulness of the true spirit of the Constitution, and in mockery of Human Rights. [*Cheers.*] May free California, and her Senators in Congress, amidst the trials before us, never fail in loyalty to Freedom! God forbid that the daughter should turn with ingratitude or neglect from the mother that bore her! [*Enthusiasm.*]

Besides this Act, there are two others of this long session to be regarded with satisfaction, — and I mention them at once, before considering the reverse of the picture. The slave-trade is abolished in the District of Columbia. This measure, though small in the sight of Justice, is important. It banishes from the National Capital an odious traffic. But this is its least office. Practically it affixes to the whole traffic, wherever it exists, — not merely in Washington, within the immediate sphere of the legislative act, but everywhere throughout the Slave States, whether at Richmond, or Charleston, or New Orleans, — the brand of Congressional reprobation. The people of the United States, by the voice of Congress, solemnly declare the domestic traffic

in slaves offensive in their sight. The Nation judges this traffic. The Nation says to it, "Get thee behind me, Satan!" [*Excitement and applause.*] It is true that Congress has not, as in the case of the foreign slave-trade, stamped it as *piracy*, and awarded to its perpetrators the doom of *pirates;* but it condemns the trade, and gives to general scorn those who partake of it. To this extent the National Government speaks for Freedom. And in doing this, it asserts, under the Constitution, legislative jurisdiction over the subject of Slavery in the District, — thus preparing the way for that complete act of Abolition which is necessary to purge the National Capital of its still remaining curse and shame.

The other measure which I hail with thankfulness is the Abolition of Flogging in the Navy. ["*Hear! hear!*"] Beyond the direct reform thus accomplished — after much effort, finally crowned with encouraging success — is the indirect influence of this law, especially in rebuking the lash, wheresoever and by whomsoever employed.

Two props and stays of Slavery are weakened and undermined by Congressional legislation. Without the *slave-trade* and without the *lash*, Slavery must fall to earth. By these the whole monstrosity is upheld. If I seem to exaggerate the consequence of these measures of Abolition, you will pardon it to a sincere conviction of their powerful, though subtile and indirect influence, quickened by a desire to find something good in a Congress which has furnished occasion for so much disappointment. Other measures there are which must be regarded not only with regret, but with indignation and disgust. [*Sensation.*]

Two broad territories, New Mexico and Utah, under the exclusive jurisdiction of Congress, have been organized without any prohibition of Slavery. In laying the foundation of their governments, destined hereafter to control the happiness of innumerable multitudes, Congress has omitted the Great Ordinance of Freedom, first moved by Jefferson, and consecrated by the experience of the Northwestern Territory: thus rejecting those principles of Human Liberty which are enunciated in our Declaration of Independence, which are essential to every Bill of Rights, and without which a Republic is a name and nothing more.

Still further, a vast territory, supposed to be upwards of seventy thousand square miles in extent, larger than all New England, has been taken from New Mexico, and, with ten million dollars besides, given to slaveholding Texas: thus, under the plea of settling the western boundary of Texas, securing to this State a large sum of money, and consigning to certain Slavery an important territory.

And still further, as if to do a deed which should "make heaven weep, all earth amazed," this same Congress, in disregard of all cherished safeguards of Freedom, has passed a most cruel, unchristian, devilish law to secure the return into Slavery of those fortunate bondmen who find shelter by our firesides. This is the Fugitive Slave Bill, — a device which despoils the party claimed as slave, whether in reality slave or freeman, of Trial by Jury, that sacred right, and usurps the question of Human Freedom, — the highest question known to the law, — committing it to the unaided judgment of a single magistrate, on *ex parte* evidence it may be, by affidavit, without the sanction of cross-examina-

tion. Under this detestable, Heaven-defying Bill, not the slave only, but the colored freeman of the North, may be swept into ruthless captivity; and there is no white citizen, born among us, bred in our schools, partaking in our affairs, voting in our elections, whose liberty is not assailed also. Without any discrimination of color, the Bill surrenders all claimed as "owing service or labor" to the same tyrannical judgment. And mark once more its heathenism. By unrelenting provisions it visits with bitter penalties of fine and imprisonment the faithful men and women who render to the fugitive that countenance, succor, and shelter which Christianity expressly requires. ["*Shame! shame!*"] Thus, from beginning to end, it sets at nought the best principles of the Constitution, and the very laws of God. [*Great sensation.*]

I might occupy your time in exposing the unconstitutionality of this Act. Denying the Trial by Jury, it is three times unconstitutional: first, as the Constitution declares "the right of the people to be secure in their persons against *unreasonable seizures*"; secondly, as it further provides that "no person shall be deprived of life, *liberty*, or property, *without due process of law*"; and, thirdly, because it expressly establishes, that "in suits at Common Law, where the value in controversy shall exceed twenty dollars, *the right of trial by jury shall be preserved.*" By this triple cord the framers of the Constitution secured Trial by Jury in every question of Human Freedom. That man is little imbued with the true spirit of American institutions, has little sympathy with Bills of Rights, is lukewarm for Freedom, who can hesitate to construe the Constitution so as to secure this safeguard. [*Enthusiastic applause.*]

Again, the Act is unconstitutional in the unprecedented and tyrannical powers it confers upon Commissioners. These petty officers are appointed, not by the President with the advice of the Senate, but by the Courts of Law, — hold their places, not during good behavior, but at the will of the Court, — and receive for their services, not a regular salary, but fees in each individual case. And yet in these petty officers, thus appointed, thus compensated, and holding their places by the most uncertain tenure, is vested a portion of that "judicial power," which, according to the positive text of the Constitution, can be in "judges" only, holding office "during good behavior," receiving "at stated times for their services a compensation which shall not be diminished during their continuance in office," and, it would seem also, appointed by the President and confirmed by the Senate, — being three conditions of judicial power. Adding meanness to violation of the Constitution, the Commissioner is bribed by a double fee to pronounce against Freedom. Decreeing a man to Slavery, he receives ten dollars; saving the man to Freedom, his fee is five dollars. ["*Shame! shame!*"]

But I will not pursue these details. The soul sickens in the contemplation of this legalized outrage. In the dreary annals of the Past there are many acts of shame, — there are ordinances of monarchs, and laws, which have become a byword and a hissing to the nations. But *when we consider the country and the age*, I ask fearlessly, what act of shame, what ordinance of monarch, what law, can compare in atrocity with this enactment of an American Congress? ["*None!*"] I do not forget Appius Claudius, tyrant Decemvir of ancient Rome, condemning Virginia as a slave, — nor Louis the Fourteenth, of

France, letting slip the dogs of religious persecution by the revocation of the Edict of Nantes, — nor Charles the First, of England, arousing the patriot rage of Hampden by the extortion of Ship-money, — nor the British Parliament, provoking, in our own country, spirits kindred to Hampden, by the tyranny of the Stamp Act and Tea Tax. I would not exaggerate; I wish to keep within bounds; but I think there can be little doubt that the condemnation now affixed to all these transactions, and to their authors, must be the lot hereafter of the Fugitive Slave Bill, and of every one, according to the measure of his influence, who gave it his support. [*Three cheers were here given.*] Into the immortal catalogue of national crimes it has now passed, drawing, by inexorable necessity, its authors also, and chiefly him, who, as President of the United States, set his name to the Bill, and breathed into it that final breath without which it would bear no life. [*Sensation.*] Other Presidents may be forgotten; but the name signed to the Fugitive Slave Bill can never be forgotten. [*"Never!"*] There are depths of infamy, as there are heights of fame. I regret to say what I must, but truth compels me. Better for him, had he never been born! [*Renewed applause.*] Better for his memory, and for the good name of his children, had he never been President! [*Repeated cheers.*]

I have likened this Bill to the Stamp Act, and I trust that the parallel may be continued yet further, by a burst of popular feeling against all action under it similar to that which glowed in the breasts of our fathers. Listen to the words of John Adams, as written in his Diary at the time.

"The year 1765 has been the most remarkable year of my life. That enormous engine, fabricated by the British Parlia-

ment, for battering down all the rights and liberties of America, I mean the Stamp Act, has raised and spread through the whole continent a spirit that will be recorded to our honor with all future generations. In every colony, from Georgia to New Hampshire inclusively, the stamp distributors and inspectors have been compelled by the unconquerable rage of the people to renounce their offices. Such and so universal has been the resentment of the people, that every man who has dared to speak in favor of the stamps, or to soften the detestation in which they are held, how great soever his abilities and virtues had been esteemed before, or whatever his fortune, connections, and influence had been, has been seen to sink into universal contempt and ignominy."[1] [*A voice, "Ditto for the Slave-Hunter!"*]

Earlier than John Adams, the first Governor of Massachusetts, John Winthrop, set the example of refusing to enforce laws against the liberties of the people. After describing Civil Liberty, and declaring the covenant between God and man in the Moral Law, he uses these good words: —

"This Liberty is the proper end and object of authority, and cannot subsist without it; and it is a liberty to that only which is good, just, and honest. This liberty you are to stand for, with the hazard not only of your goods, but of your lives, if need be. *Whatsoever crosseth this is not authority, but a distemper thereof.*"[2]

Surely the love of Freedom is not so far cooled among us, descendants of those who opposed the Stamp Act, that we are insensible to the Fugitive Slave Bill. In those other days, the unconquerable rage of the people compelled the stamp distributors and inspectors to re-

[1] Diary, December 18, 1765: Works, Vol. II. p 154.
[2] History of New England (ed. Savage), 1645, Vol. II. p. 229.

nounce their offices, and held up to detestation all who dared to speak in favor of the stamps. Shall we be more tolerant of those who volunteer in favor of this Bill? [*"No! no!"*] — more tolerant of the Slave-Hunter, who, under its safeguard, pursues his prey upon our soil? [*"No! no!"*] The Stamp Act could not be executed here. Can the Fugitive Slave Bill? [*"Never!"*]

And here, Sir, let me say, that it becomes me to speak with caution. It happens that I sustain an important relation to this Bill. Early in professional life I was designated by the late Judge Story a Commissioner of his Court, and, though I do not very often exercise the functions of this appointment, my name is still upon the list. As such, I am one of those before whom the panting fugitive may be dragged for the decision of the question, whether he is a freeman or a slave. But while it becomes me to speak with caution, I shall not hesitate to speak with plainness. I cannot forget that I am a *man*, although I am a *Commissioner*. [*Three cheers here given.*]

Could the same spirit which inspired the Fathers enter into our community now, the marshals, and every *magistrate* who regarded this law as having any constitutional obligation, would resign, rather than presume to execute it. This, perhaps, is too much to expect. But I will not judge such officials. To their own consciences I leave them. Surely no person of humane feelings and with any true sense of justice, living in a land "where bells have knolled to church," whatever may be the apology of public station, can fail to recoil from such service. For myself let me say, that I can imagine no office, no salary, no consideration, which I would not gladly forego, rather than become in any way

the agent in enslaving my brother-man. [*Sensation.*] Where for me were comfort and solace after such a work? [*A voice, "Nowhere!"*] In dreams and in waking hours, in solitude and in the street, in the meditations of the closet and in the affairs of men, wherever I turned, there my victim would stare me in the face. From distant rice-fields and sugar-plantations of the South, his cries beneath the vindictive lash, his moans at the thought of Liberty, once his, now, alas! ravished away, would pursue me, repeating the tale of his fearful doom, and sounding, forever sounding, in my ears, "Thou art the man!" [*Applause.*]

The magistrate who pronounces the decree of Slavery, and the marshal who enforces it, act in obedience to law. This is their apology; and it is the apology also of the masters of the Inquisition, as they ply the torture amidst the shrieks of their victim. Can this weaken accountability for wrong? Disguise it, excuse it, as they will, the fact must glare before the world, and penetrate the conscience too, that the fetters by which the unhappy fugitive is bound are riveted by their tribunal, — that his second life of wretchedness dates from their agency, — that his second birth as a slave proceeds from *them.* The magistrate and marshal do for him here, in a country which vaunts a Christian civilization, what the naked, barbarous Pagan chiefs beyond the sea did for his grandfather in Congo: *they transfer him to the Slave-Hunter,* and for this service receive the very price paid for his grandfather in Congo, — *ten dollars!* [*"Shame! shame!"*]

Gracious Heaven! can such things be on our Free Soil? [*"No!"*] Shall the evasion of Pontius Pilate be enacted anew, and a judge vainly attempt, by washing

the hands, to excuse himself for condemning one in whom he can "find no fault"? Should any court, sitting here in Massachusetts, for the first time in her history, become agent of the Slave-Hunter, the very images of our fathers would frown from the walls; their voices would cry from the ground; their spirits, hovering in the air, would plead, remonstrate, protest, against the cruel judgment. [*Cheers.*] There is a legend of the Church, still living on the admired canvas of a Venetian artist, that St. Mark, descending from the skies with headlong fury into the public square, broke the manacles of a slave in presence of the very judge who had decreed his fate. This is known as "The Miracle of the Slave," and grandly has Art illumined the scene.[1] Should Massachusetts hereafter, in an evil hour, be desecrated by any such decree, may the good Evangelist once more descend with valiant arm to break the manacles of the Slave! [*Enthusiasm.*]

Sir, I will not dishonor this home of the Pilgrims, and of the Revolution, by admitting — nay, *I cannot believe — that this Bill will be executed here.* [*"Never!"*] Among us, as elsewhere, individuals may forget humanity, in fancied loyalty to law; but the public conscience will not allow a man who has trodden our streets as a freeman to be dragged away as a slave. [*Applause.*] By escape from bondage he has shown that true manhood which must grapple to him every honest heart. He may be ignorant and rude, as poor, but he is of

[1] An eloquent French critic says, among other things, of this greatest picture of Tintoretto, that "no painting surpasses, or perhaps equals" it, and that, before seeing it, "one can have no idea of the human imagination." (Taine, Italy, Florence, and Venice, tr. Durand, pp. 314, 316.) Some time after this Speech an early copy or sketch of this work fell into Mr. Sumner's hands, and it is now a cherished souvenir of those anxious days when the pretensions of Slavery were at their height.

true nobility. Fugitive Slaves are the heroes of our age. In sacrificing them to this foul enactment we violate every sentiment of hospitality, every whispering of the heart, every commandment of religion.

There are many who will never shrink, at any cost, and notwithstanding all the atrocious penalties of this Bill, from effort to save a wandering fellow-man from bondage; they will offer him the shelter of their houses, and, if need be, will protect his liberty by force. But let me be understood; I counsel no violence. There is another power, stronger than any individual arm, which I invoke: I mean that irresistible Public Opinion, inspired by love of God and man, which, without violence or noise, gently as the operations of Nature, makes and unmakes laws. Let this Public Opinion be felt in its might, and the Fugitive Slave Bill will become everywhere among us a dead letter. No lawyer will aid it by counsel, no citizen will be its agent; it will die of inanition, — like a spider beneath an exhausted receiver. [*Laughter.*] Oh! it were well the tidings should spread throughout the land that here in Massachusetts this accursed Bill has found no *servant.* [*Cheers.*] "Sire, in Bayonne are honest citizens and brave soldiers only, *but not one executioner,*" was the reply of the governor to the royal mandate from Charles the Ninth, of France, ordering the massacre of St. Bartholomew.[1] [*Sensation.*]

[1] Le Vicomte d'Orthez à Charles IX.: D'Aubigné, Histoire Universelle, Part. II. Liv. I. ch. 5, cited by Sismondi, Histoire des Français, Tom. XIX. p. 177, note. I gladly copy this noble letter. "Sire, j'ai communiqué le commandement de Votre Majesté à ses fidèles habitans et gens de guerre de la garnison; je n'y ai trouvé que bons citoyens et braves soldats, mais pas un bourreau. C'est pourquoi eux et moi supplions très humblement Votre dite Majesté vouloir employer en choses possibles, quelque hasardeuses qu'elles soient, nos bras et nos vies, comme étant, autant qu'elles dureront, Sire, vôtres."

It rests with you, my fellow-citizens, by word and example, by calm determinations and devoted lives, to do this work. From a humane, just, and religious people will spring a Public Opinion to keep perpetual guard over the liberties of all within our borders. Nay, more, like the flaming sword of the cherubim at the gates of Paradise, turning on every side, it shall prevent any SLAVE-HUNTER from ever setting foot in this Commonwealth. Elsewhere he may pursue his human prey, employ his congenial bloodhounds, and exult in his successful game; but into Massachusetts he must not come. Again, let me be understood, I counsel no violence. I would not touch his person. Not with whips and thongs would I scourge him from the land. The contempt, the indignation, the abhorrence of the community shall be our weapons of offence. Wherever he moves, he shall find no house to receive him, no table spread to nourish him, no welcome to cheer him. The dismal lot of the Roman exile shall be his. He shall be a wanderer, without *roof, fire, or water.* Men shall point at him in the streets, and on the highways.

> "Sleep shall neither night nor day
> Hang upon his penthouse-lid;
> He shall live a man forbid;
> Weary sevennights nine times nine
> Shall he dwindle, peak, and pine." [*Applause.*]

Villages, towns, and cities shall refuse to receive the monster; they shall vomit him forth, never again to disturb the repose of our community. [*Repeated rounds of applause.*]

The feelings with which we regard the Slave-Hunter will be extended soon to all the mercenary agents and heartless minions, who, without any positive obligation of law, become part of his pack. They are *volunteers,*

and, as such, must share the ignominy of the chief Hunter. [*Cheers.*]

I have dwelt thus long upon the Fugitive Slave Bill especially in the hope of contributing something to that Public Opinion which is destined in the Free States to be the truest defence of the slave. I now advance to other more general duties.

We have seen what Congress has done. And yet, in the face of these enormities of legislation, — of Territories organized without the prohibition of Slavery, of a large province surrendered to Texas and to Slavery, and of this execrable Fugitive Slave Bill, — in the face also of Slavery still sanctioned in the District of Columbia, of the Slave-Trade between domestic ports under the flag of the Union, and of the Slave Power still dominant over the National Government, we are told that the Slavery Question is settled. Yes, *settled, — settled,* — that is the word. *Nothing, Sir, can be settled which is not right.* [*Sensation.*] Nothing can be settled which is against Freedom. Nothing can be settled which is contrary to the Divine Law. God, Nature, and all the holy sentiments of the heart repudiate any such false seeming settlement.

Amidst the shifts and changes of party, our DUTIES remain, pointing the way to action. By no subtle compromise or adjustment can men suspend the commandments of God. By no trick of managers, no hocus-pocus of politicians, no "mush of concession," can we be released from this obedience. It is, then, in the light of duties that we are to find peace for our country and ourselves. Nor can any settlement promise peace which

is not in harmony with those everlasting principles from which our duties spring.

Here I shall be brief. Slavery is wrong. It is the source of unnumbered woes, — not the least of which is its influence on the Slaveholder himself, rendering him insensible to its outrage. It overflows with injustice and inhumanity. Language toils in vain to picture the wretchedness and wickedness which it sanctions and perpetuates. Reason revolts at the impious assumption that man can hold property in man. As it is our perpetual duty to oppose wrong, so must we oppose Slavery; nor can we ever relax in this opposition, so long as the giant evil continues anywhere within the sphere of our influence. *Especially must we oppose it, wherever we are responsible for its existence, or in any way parties to it.*

And now mark the distinction. The testimony which we bear against Slavery, as against all other wrong, is, in different ways, according to our position. The Slavery which exists under other governments, as in Russia or Turkey, or in other States of our Union, as in Virginia and Carolina, we can oppose only through the influence of morals and religion, without in any way invoking the Political Power. Nor do we propose to act otherwise. But Slavery, where we are parties to it, wherever we are responsible for it, everywhere within our jurisdiction, must be opposed not only by all the influences of literature, morals, and religion, but directly by every instrument of Political Power. [*Rounds of applause.*] As it is sustained by law, it can be overthrown only by law; and the legislature having jurisdiction over it must be moved to consummate the work. I am sorry to confess that this can be done only through

the machinery of politics. The politician, then, must be summoned. The moralist and philanthropist must become for this purpose politicians, — not forgetting morals or philanthropy, but seeking to apply them practically in the laws of the land.

It is a mistake to say, as is often charged, that we seek to interfere, through Congress, with Slavery in the States, or in any way to direct the legislation of Congress upon subjects not within its jurisdiction. Our *political* aims, as well as our *political* duties, are coextensive with our *political* responsibilities. And since we at the North are responsible for Slavery, wherever it exists under the jurisdiction of Congress, it is unpardonable in us not to exert every power we possess to enlist Congress against it.

Looking at details : —

We demand, first and foremost, the instant Repeal of the Fugitive Slave Bill. [*Cheers.*]

We demand the Abolition of Slavery in the District of Columbia. [*Cheers.*]

We demand of Congress the exercise of its time-honored power to prohibit Slavery in the Territories. [*Cheers.*]

We demand of Congress that it shall refuse to receive any new Slave State into the Union. [*Cheers, repeated.*]

We demand the Abolition of the Domestic Slave-Trade, so far as it can be constitutionally reached, but particularly on the high seas under the National Flag.

And, generally, we demand from the National Government the exercise of all constitutional power to relieve itself from responsibility for Slavery.

And yet one thing further must be done. The Slave Power must be overturned, — so that the National Gov-

ernment may be put openly, actively, and perpetually on the side of Freedom. [*Prolonged applause.*]

In demanding the overthrow of the Slave Power, we but seek to exclude from the operations of the National Government a *political* influence, having its origin in Slavery, which has been more potent, sinister, and mischievous than any other in our history. This Power, though unknown to the Constitution, and existing in defiance of its true spirit, now predominates over Congress, gives the tone to its proceedings, seeks to control all our public affairs, and humbles both the great political parties to its will. It is that combination of Slave-masters, whose bond of union is a common interest in Slavery. Time would fail me in exposing the extent to which its influence has been felt, the undue share of offices it has enjoyed, and the succession of its evil deeds. Suffice it to say, that, for a long period, the real principle of this union was not observed by the Free States. In the game of office and legislation the South has always won. It has played with loaded dice,— *loaded with Slavery.* [*Laughter.*] The trick of the Automaton Chess-Player, so long an incomprehensible marvel, has been repeated, with similar success. Let the Free States make a move on the board, and the South says, "Check!" ["*Hear! hear!*"] Let them strive for Free Trade, as they did once, and the cry is, "Check!" Let them jump towards Protection, and it is again, "Check!" Let them move towards Internal Improvements, and the cry is still, "Check!" Whether forward or backward, to the right or left, wherever they turn, the Free States are pursued by an inexorable "Check!" But the secret is now discovered. Amid the well-arranged machinery which seemed to move the victorious chess-player is a

living force, — only recently discovered, — being none other than the Slave Power. It is the Slave Power which has been perpetual victor, saying always, "Check!" to the Free States. As this influence is now disclosed, it only remains that it should be openly encountered in the field of *politics.* [*A voice, "That is the true way."*]

Such is our cause. It is not sectional; for it simply aims to establish under the National Government those great principles of Justice and Humanity which are broad and universal as Man. It is not aggressive; for it does not seek in any way to interfere through Congress with Slavery in the States. It is not contrary to the Constitution; for it recognizes this paramount law, and in the administration of the Government invokes the spirit of its founders. It is not hostile to the quiet of the country; for it proposes the only course by which agitation can be allayed, and quiet be permanently established. And yet there is an attempt to suppress this cause, and to stifle its discussion.

Vain and wretched attempt! [*A band of music in the street here interrupted the speaker.*]

I am willing to stop for one moment, if the audience will allow me, that they may enjoy that music. [*Several voices, "Go on! go on!" Another voice, "We have better music here." After a pause the speaker proceeded.*]

Fellow-citizens, I was saying that it is proposed to suppress this cause, and to stifle this discussion. But this cannot be done. That subject which more than all other subjects needs careful, conscientious, and kind consideration in the national councils, which will not admit of postponement or hesitation, which is allied with the great interests of the country, which controls the tariff

and causes war, which concerns alike all parts of the land, North and South, East and West, which affects the good name of the Republic in the family of civilized nations, *the subject of subjects*, has now at last, after many struggles, been admitted within the pale of legislative discussion. From this time forward it must be entertained by Congress. It will be one of the orders of the day. It cannot be passed over or forgotten. It cannot be blinked out of sight. The combinations of party cannot remove it. The intrigues of politicians cannot jostle it aside. There it is, in towering colossal proportions, filling the very halls of the Capitol, while it overshadows and darkens all other subjects. There it will continue, till driven into oblivion by the irresistible Genius of Freedom. [*Cheers.*]

I am not blind to adverse signs. The wave of reaction, after sweeping over Europe, has reached our shores. The barriers of Human Rights are broken down. Statesmen, writers, scholars, speakers, once their uncompromising professors, have become professors of compromise. All this must be changed. Reaction must be stayed. The country must be aroused. The cause must again be pressed, — with the fixed purpose never to moderate our efforts until crowned by success. [*Applause.*] The National Government, everywhere within its proper constitutional sphere, must be placed on the side of Freedom. The policy of Slavery, which has so long prevailed, must give place to the policy of Freedom. The Slave Power, fruitful parent of national ills, must be driven from its supremacy. Until all this is done, the friends of the Constitution and of Human Rights cannot cease from labor, nor can the Republic hope for any repose but the repose of submission.

Men of all parties and pursuits, who wish well to their country, and would preserve its good name, must join now. Welcome here the Conservative and the Reformer! for our cause stands on the truest Conservatism and the truest Reform. In seeking the reform of existing evils, we seek also the conservation of the principles handed down by our fathers. Welcome especially the young! To you I appeal with confidence. Trust to your generous impulses, and to that reasoning of the heart, which is often truer, as it is less selfish, than the calculations of the head. [*Enthusiasm.*] Do not exchange your aspirations for the skepticism of age. Yours is the better part. In the Scriptures it is said that "your young men shall see visions and your old men shall dream dreams"; on which Lord Bacon has recorded the ancient inference, "that young men are admitted nearer to God than old, because vision is a clearer revelation than a dream." [1]

It is not uncommon to hear people declare themselves against Slavery, and willing to unite in *practical* efforts. *Practical* is the favorite word. At the same time, in the loftiness of pharisaic pride, they have nothing but condemnation, reproach, or contempt for the earnest souls that have striven long years in this struggle. To such I would say, If you are sincere in what you declare, if your words are not merely lip-service, if in your heart you are entirely willing to join in practical effort against Slavery, then, by life, conversation, influence, vote, disregarding "the ancient forms of party strife," seek to carry the principles of Freedom into the National Government, wherever its jurisdiction is acknowledged and its power can be felt. Thus, with-

[1] Essays, XLII. Of Youth and Age.

out any interference with the States which are beyond this jurisdiction, may you help to efface the blot of Slavery from the National brow.

Do this, and you will most truly promote that harmony which you so much desire. And under this blessed influence tranquillity will be established throughout the country. Then, at last, the Slavery Question will be settled. Banished from its usurped foothold under the National Government, Slavery will no longer enter, with distracting force, into national politics, making and unmaking laws, making and unmaking Presidents. Confined to the States, where it is left by the Constitution, it will take its place as a local institution, — if, alas! continue it must, — for which we are in no sense responsible, and against which we cannot exert any political power. We shall be relieved from the present painful and irritating connection with it, the existing antagonism between the South and the North will be softened, crimination and recrimination will cease, and the wishes of the Fathers will be fulfilled, while this Great Evil is left to all kindly influences and the prevailing laws of social economy.

To every laborer in a cause like this there are satisfactions unknown to the common political partisan. Amidst all apparent reverses, notwithstanding the hatred of enemies or the coldness of friends, he has the consciousness of duty done. Whatever may be existing impediments, his also is the cheering conviction that every word spoken, every act performed, every vote cast for this cause, helps to swell those quickening influences by which Truth, Justice, and Humanity will be established upon earth. [*Cheers.*] He may not live to witness the blessed consummation, but it is none

the less certain. Others may dwell on the Past as secure. Under the laws of a beneficent God *the Future also is secure,* — on the single condition that we labor for its great objects. [*Enthusiastic applause.*]

The language of jubilee, which, amidst reverse and discouragement, burst from the soul of Milton, as he thought of sacrifice for the Church, will be echoed by every one who toils and suffers for Freedom. "Now by this little diligence," says the great patriot of the English Commonwealth, "mark what a privilege I have gained with good men and saints, to claim my right of lamenting the tribulations of the Church, if she should suffer, *when others, that have ventured nothing for her sake, have not the honor to be admitted mourners.* But if she lift up her drooping head and prosper, among those that have something more than wished her welfare, I have my charter and freehold of rejoicing to me and my heirs."[1] We, too, may have our charter and freehold of rejoicing to ourselves and our heirs, if we now do our duty.

I have spoken of votes. Living in a community where political power is lodged with the people, and each citizen is an elector, the vote is an important expression of opinion. The vote is the cutting edge. It is well to have correct opinions, but the vote must follow. The vote is the seed planted; without it there can be no sure fruit. The winds of heaven, in their beneficence, may scatter the seed in the furrow; but it is not from such accidents that our fields wave with the golden harvest. He is a foolish husbandman who neg-

[1] The Reason of Church Government, Book II., Introduction: Prose Works, ed. Symmons, Vol. I. p. 117.

lects to sow his seed; and he is an unwise citizen, who, desiring the spread of good principles, neglects to deposit his vote for the candidate who is the representative of those principles.

Admonished by experience of timidity, irresolution, and weakness in our public men, particularly at Washington, amidst the temptations of ambition and power, the friends of Freedom cannot lightly bestow their confidence. They can put trust only in men of tried character and inflexible will. Three things at least they must require: the first is *backbone;* the second is *backbone*; and the third is *backbone.* [*Loud cheers.*] My language is homely; I hardly pardon myself for using it; but it expresses an idea which must not be forgotten. When I see a person of upright character and pure soul yielding to a temporizing policy, I cannot but say, *He wants backbone.* When I see a person talking loudly against Slavery in private, but hesitating in public, and failing in the time of trial, I say, *He wants backbone.* When I see a person who coöperated with Antislavery men, and then deserted them, I say, *He wants backbone.* [*"Hear! hear!"*] When I see a person leaning upon the action of a political party, and never venturing to think for himself, I say, *He wants backbone.* When I see a person careful always to be on the side of the majority, and unwilling to appear in a minority, or, if need be, to stand alone, I say, *He wants backbone.* [*Applause.*] Wanting this, they all want that courage, constancy, firmness, which are essential to the support of PRINCIPLE. Let no such man be trusted. [*Renewed applause.*]

For myself, fellow-citizens, my own course is determined. The first political convention which I ever attended was in the spring of 1845, against the annexa-

tion of Texas. I was at that time a silent and passive Whig. I had never held political office, nor been a candidate for any. No question ever before drew me to any active political exertion. The strife of politics seemed to me ignoble. A desire to do what I could against Slavery led me subsequently to attend two different State Conventions of Whigs, where I coöperated with eminent citizens in endeavor to arouse the party in Massachusetts to its Antislavery duties. A conviction that the Whig party was disloyal to Freedom, and an ardent aspiration to help the advancement of this great cause, has led me to leave that party, and dedicate what of strength and ability I have to the present movement. [*Great applause.*]

To vindicate Freedom, and oppose Slavery, so far as I may constitutionally,— with earnestness, and yet, I trust, without personal unkindness on my part, — is the object near my heart. Would that I could impress upon all who now hear me something of the strength of my own convictions! Would that my voice, leaving this crowded hall to-night, could traverse the hills and valleys of New England, that it could run along the rivers and the lakes of my country, lighting in every heart a beacon-flame to arouse the slumberers throughout the land! [*Sensation.*] In this cause I care not for the name by which I am called. Let it be Democrat, or "Loco-foco," if you please. No man in earnest will hesitate on account of a name. Rejoicing in associates from any quarter, I shall be found ever with that party which most truly represents the principles of Freedom. [*Applause.*] Others may become indifferent to these principles, bartering them for political success, vain and short-lived, or forgetting the visions of youth in the

dreams of age. Whenever I forget them, whenever I become indifferent to them, whenever I cease to be constant in maintaining them, through good report and evil report, in any future combinations of party, then may my tongue cleave to the roof of my mouth, may my right hand forget its cunning! [*Cheers.*]

And now as I close, fellow-citizens, I return in thought to the political election with which I began. If from this place I could make myself heard by the friends of Freedom throughout the Commonwealth, I would give them for a rallying-cry three words, —

FREEDOM, UNION, VICTORY!

The peroration was received with the most earnest applause, followed by cries of *"Three cheers for Charles Sumner!" "Three cheers for Phillips and Walker!" "Three cheers for Horace Mann and the cause!"*

ACCEPTANCE OF THE OFFICE OF SENATOR OF THE UNITED STATES.

LETTER TO THE LEGISLATURE OF MASSACHUSETTS, MAY 14, 1851.

THE combinations or agreements between the Free-Soilers and Democrats throughout Massachusetts in the election of members of the State Legislature were successful. The election was more than usually interesting, because the Legislature was to choose a United States Senator for the term of six years from the ensuing fourth of March, in the place of Mr. Webster, who had become Secretary of State. Nothing had been said before the election with regard to candidates for this place, but there was a general understanding, at least among Free-Soilers, that it should be claimed for one of their party. Mr. Sumner had never regarded himself as a candidate, and the first intimation he had that he was so regarded by others came to him early in the morning after the election in a note written in pencil at his door by Seth Webb, Jr., Esq., afterwards the excellent Consul at Hayti, as follows.

"MY DEAR MR. SUMNER, —

"I called to tell you *such* good news. We have carried everything in the State. Senate sure; House nearly certain; Governor, *Senator*, all. You are bound for Washington this winter.

"Yours truly,

"SETH WEBB, JR."

Similar intimations came from various quarters. Under date of December 18th, the Rev. Joshua Leavitt, the constant Abolitionist, wrote: "I confidently hope and trust that in a month from this time you will take your seat in the Senate of the United States, as the successor of Daniel Webster. I need not say how greatly I shall be gratified at such an event, both for your sake and that of the cause. It will be a worthy rebuke of cotton arrogance, pronounced in earnest and sealed by action in the name of the good old Commonwealth." An active Free-Soiler in Vermont wrote: "I think you are nearer my ideal of a Free-Soiler of this time than anybody else; so does the whole Free-Soil heart

of New England. And you may depend that the actual triumph of just such a man as you are will give a heavier blow to the conspirators against Freedom, and do more to fortify the general trust in the ultimate ascendency of uncompromising right, than that of any other living being. You cannot escape from your position." Mr. Giddings and Mr. Chase both wrote from Washington, insisting that Mr. Sumner could not refuse to be a candidate. Hon. John Mills wrote from Springfield: "C. S., I am satisfied, must be the man. He stands better with the Democrats than others, and so he does with the Free-Soilers in this section of the State." Hon. C. F. Adams "saw difficulties in alliance with the Democracy"; but he added, "If our friends decide to risk themselves in that ship, I trust we may get a full consideration for the risk, and the only full consideration that we can receive is in securing your services in the Senate. If anything can be done with that iron and marble body, you may do it. You know how hopeless I think the task."

Under the unamended Constitution of Massachusetts popular elections were determined by a majority of the votes cast, and not by a plurality. In the event of a failure to secure a majority, the election of Governor and Lieutenant-Governor was transferred to the Legislature, which made a selection from the three highest candidates. This duty was now devolved upon the Legislature. At the opening of the session there were separate caucuses of the Free-Soilers and Democrats, with committees of conference, which resulted in the understanding that the Democrats should have the Governor, Lieutenant-Governor, five of the nine Councillors, the Treasurer, and the Senator for the short term, being the few weeks till the 4th of March following, while the Free-Soilers should have the Senator for the long term, being for six years from the 4th of March. The two parties united on Mr. Sumner as their candidate for Senator. The nomination by the Free-Soilers was communicated in the following letter.

"CAUCUS ROOM, STATE HOUSE, ½ past 10, A. M. [Jan. 7th, 1851.]

"We have just taken the vote by ballot for Senator, and you are the man.

"Whole number

"For Charles Sumner 82

"Others 00

"We have sworn to stand by you, to sink or swim with you, AT ALL HAZARDS.

"If you shall fail us in any respect, may God forgive you! — we never shall.

"Yours truly,

"E. L. KEYES.

"CHARLES SUMNER."

The nomination thus unanimously conferred was welcomed beyond the caucus that made it. A letter of Richard H. Dana, Jr., written the next day, congratulates Mr. Sumner. "I have just learned that you have received the unanimous nomination of the Free-Soil caucus, as their first choice for the Senate. Whether the state of parties permits your election or not, this voluntary and unanimous tribute from our party must be a deep gratification to you through life, and I heartily congratulate you upon it."

Why Mr. Sumner was selected appears from the *Commonwealth*, which was at the time the organ of the Free-Soil party, and edited by Richard Hildreth, the historian. "Mr. Sumner was selected as the candidate for the Senate, because, while true as the truest to Free-Soil principles, he was supposed to be less obnoxious than any prominent Free-Soiler in the State to the Democratic party. He was never identified with any of the measures of the Whig party, except those relating to Slavery. He never entered a Whig State Convention, except to sustain the sentiment, not of the Whig party alone, but of Massachusetts, against the annexation of Texas and the Mexican War."[1]

The Democrats in caucus were less prompt than the Free-Soilers. They began by a resolution to abide by the decision of two thirds of those present and voting, being the rule of the Baltimore Convention in 1844. This was adopted almost unanimously. Mr. Sumner then received the two thirds required, when one of those who voted against him, after stating his adverse vote, moved that he be unanimously declared the candidate of the Democratic caucus, and six only voted in the negative.

On the completion of these arrangements, the Legislature proceeded to the elections, choosing George S. Boutwell Governor, and Henry W. Cushman Lieutenant-Governor, both Democrats, and, at a later day, Robert Rantoul, Jr., a Democrat, Senator for the short term. The other Democrats were chosen according to the understanding. In the Senate, Henry Wilson, Free-Soiler, had been chosen President, and in the House of Representatives Nathaniel P. Banks, Jr., Democrat, Speaker.

On the 14th of January the House of Representatives proceeded to ballot for Senator, with the following result: Whole number, 381; necessary to a choice, 191; Charles Sumner, 186; R. C. Winthrop, 167; scattering, 28; blanks, 3. There was a second ballot on the same day, when Mr. Sumner had the same number of votes as before. The entire Free-Soil vote was 110, which he received, with 76 Democratic votes.

The *Commonwealth* announced at once the determination of the Free-Soil party as follows. "This entire unanimity of the Free-Soil members indicates a purpose, not to be changed, to stand by their candidate, come

[1] Daily Commonwealth, April 2, 1851.

what may. They have taken the candidates presented by the Democratic party without pledges, without questions. They have selected for their candidate a man who stands first in the respect and affections of every true Free-Soiler in the State. Their constituents would repudiate them, if they should desert him now. We are assured *they never will.*"[1]

The failure in the House did not prevent the Senate from proceeding with the election, on January 22d, when the whole number of votes was 38: for Charles Sumner, 23; for R. C. Winthrop, 14; and for Henry W. Bishop, 1; and Mr. Sumner was accordingly chosen on the part of the Senate.

During the long contest which ensued, Mr. Sumner was constant to the end, without doing or saying anything to change or modify his position. Extracts from his speeches, printed in capitals, with hostile comments, appeared daily in the Whig and Democratic papers, and were often characterized as *treasonable*, while he was called a *disunionist*. In reply to a personal and political friend, who sought some mode of meeting these attacks, he wrote the following private letter, which was never published.

BOSTON, January 21, 1851.

MY DEAR SIR: —

The peculiar nature of your inquiry, and the friendship which prompts it, do not allow me to decline an answer.

You know well that I do not seek or desire any political office, that I am not voluntarily in my present position as candidate, and that, prescribing to myself the rule of *non-intervention*, I have constantly declined doing anything to promote my election, and have refused pledges or explanations with regard to my future course, beyond what are implied in my past life, my published speeches, and my character.

To these I now refer. They will give a sufficient refutation to the charge that I am a *Disunionist*. No honest person, acquainted with them, can make this charge.

Besides, I am closely identified, as you also are, with

[1] Daily Commonwealth, January 15, 1851.

the well-known principles of the Free-Soil party. These, while declaring the duty of opposing Slavery and its influence, wherever they exist under the National Government, always recognize that other duty of loyalty to the Union and the Constitution. We propose to wait and work patiently under and through the Constitution, that our purposes may be peaceably accomplished in the spirit of that instrument and of our fathers. We are Constitutionalists and Unionists. In this class I have always been and still am.

That I may place this matter beyond question, I beg leave to repeat and reaffirm what I said on a former occasion: "We reverence the Constitution of the United States, and seek to guard it against infractions, believing that under the Constitution Freedom can be best preserved. We reverence the Union of the States, *believing that the peace, happiness, and welfare of all depend upon this blessed bond.*"

Faithfully yours,

CHARLES SUMNER.

In another letter, written during the contest and published at its close, Mr. Sumner stated his position more fully, and released the party from all obligation to him as a candidate.

BOSTON, February 22, 1851.

MY DEAR SIR: —

I desire to repeat to you in writing what I have so constantly said to you and others by word of mouth.

Early in life I formed a determination never to hold any political office, and of course never to be a candidate for any. My hope was (might I so aspire!) to show, that, without its titles or emoluments, something might be done for the good of my fellow-men.

Notwithstanding the strength of this determination, often declared, I have, by the confidence of the friends of Freedom in Boston, more than once been pressed into the position of candidate; and now, by the nomination of the Free-Soil and Democratic members of the Legislature of Massachusetts, contrary to desires specially made known to all who communicated with me on the subject, I have been brought forward as their candidate for the Senate of the United States.

Pardon me, if I say that personal regrets mingle with gratitude for the honor done me. The office of Senator, though elevated and important, is to me less attractive than other and more quiet fields.

Besides, there are members of our party, valued associates in our severe struggle, to whom I gladly defer, as representatives of the principles we have at heart.

I trust, therefore, that the friends of Freedom in the Legislature will not, on any ground of delicacy towards me, hesitate to transfer their support to some other candidate, faithful to our cause. In this matter, I pray you, do not think of me. I have no political prospects which I desire to nurse. There is nothing in the political field which I covet. Abandon me, then, whenever you think best, without notice or apology. The cause is everything; I am nothing.

I rely upon you in some proper way to communicate this note to the Free-Soil members of the Legislature.

Believe me, my dear Sir,

Very faithfully yours,

CHARLES SUMNER.

Hon. HENRY WILSON, Chairman of the Committee of the Free-Soil Members of the Legislature.

He also wrote privately to more than one leader, proposing to withdraw. Hon. Charles Allen, who was then at Washington, said in reply: "I need no declaration from you to assure me that you did not seek nor desire political office. On that subject you have no secrets to communicate to me. Your purposes and wishes have been transparent. . . . . Though not so tall by some inches, I believe I have kept myself about as bolt upright as you have, and as far within the lines of the Free-Soil party. I shall give no more heed to the suggestion of your letter. You must be the hero of this war to the end, — the conquering hero, I trust." Hon. Stephen C. Phillips, though not sympathizing with the "Coalition," gave his best wishes to Mr. Sumner, saying: "As the case now stands, I hope you will not be disposed, and I am clear that the Free-Soil members should not allow you, to withdraw yourself; and in view of what may affect you personally, and of some probable or possible general results, I rejoice in the prospect of your election."

The issue was presented, if possible, with increased distinctness by the revival in the papers of the speech at Faneuil Hall on the eve of the election. The editor of the *Times*, a Democratic paper in Boston, calling on Mr. Sumner, invited him to modify his opinions, or, as was sometimes said, to "ease off," especially with regard to his recent speech. This Mr. Sumner declined to do, when the editor inquired how he would like that speech reprinted in the *Times*, that it might be read by the Legislature. Mr. Sumner replied at once, that nothing could give him more pleasure. The speech appeared the next day, with an appeal to the Legislature as follows. "Mr. Sumner avows that what is called his Faneuil-Hall Speech contains his calm, deliberately formed, and well-matured opinions, — opinions by which his action would be governed in the event of his election to the office of United States Senator. . . . . We hope that every Democratic member of the Legislature will read the speech of the man for whom they are asked to vote, and then consider whether it is not their duty to vote for some other person."[1]

As the discussion proceeded, the *Commonwealth* also published the speech, introducing it with these defiant words: "We treat our readers to-day to the noble speech of Charles Sumner at that great 'treasonable' meeting in Faneuil Hall. We are proud of it, and of the man who made it. We give it as it was reported by Dr. Stone for the *Traveller*, and as it was copied into the *Times*. The apologists for Slavery have heaped abuse on Mr. Sumner for this speech, and garbled it to serve their base purposes; but here it stands. Not a glorious word of it can or shall be rubbed out. We ask any member of the Legislature, whatever may be his politics or party, as a man, as a son of New England, and as an ad-

[1] Boston Daily Times, January 10, 1851.

mirer of Washington, Jefferson, Patrick Henry, John Hancock, and Samuel Adams, to read this speech, and tell us how he can do a better thing than to vote for its author next Wednesday. Here you have the intellect and heart of a man, — a man for the times, a man for Massachusetts!"[1]

The session wore on, with constantly recurring ballots, always unsuccessful, when the organ of the Free-Soil party made another appeal, in which it presented strongly the issue of principle involved. An extract will show the character of this appeal. "Circumstances have conspired to give extraordinary interest to this election in Massachusetts. Not here only, but elsewhere, both North and South, it is regarded as symbolical of the march of new opinions on an important subject. There can be no doubt in the mind of any reasonable man that there is gradually, but certainly, approaching that tremendous moral conflict in politics which was early foreseen by the wise men of the Republic as sure at some day to happen, and which no human power can do more than to retard. . . . . One peculiarity attending this election is, that it involves a true issue of principle. . . . . The question is not so much whether Mr. Sumner or any one else is to be Senator as whether the antislavery sentiment shall be understood as having established itself not only in the internal and domestic policy of the Commonwealth, where it has always been, but also in the channels through which it connects itself with the government of the Union. Tenfold importance has been attached to this decision from the fact of the apostasy to Freedom lately committed by the person who for many years was considered as the leading exponent of Massachusetts doctrines in the Senate. The election of such a man as Charles Sumner in the room of such a man as Daniel Webster may be construed to be quite as much a complete disavowal of the late conduct of the one as a sanction of the system advocated by the other. Herein it is not difficult to trace the real causes as well of the extraordinary opposition on the one side as of the tenacious adherence on the other."[2]

This was followed in a few days by the annunciation of the determination of the party. "But one course is left, — to stand by Charles Sumner, as our first, our last, our only choice. And if we fail, we fail in a good cause, true to our promises, true to our faith."[3]

On April 23d there was another ballot, when the result was announced as follows: Whole number of votes, 387; necessary to a choice, 194; Charles Sumner, 194; R. C. Winthrop, 167; scattering, 26. On the report it appeared that Mr. Sumner was elected, when it was insisted that a vote having his name printed upon it, with the name of John

[1] Daily Commonwealth, March 28, 1851. [2] Ibid., March 31, 1851.
[3] Ibid., April 2, 1851.

Mills in pencil beneath, which had been thrown out, should be counted for Mr. Mills, thus making one more necessary to a choice. It was also stated that the record of the clerk showed that only 386 votes were cast, while this count showed 388. This inconsistency was not explained. Three other ballots were had unsuccessfully. On April 24th there was another unsuccessful ballot, when, on motion of Sidney Bartlett, Esq., the eminent lawyer, and a Whig, it was ordered, that, "in the further balloting, the ballot be placed in an envelope, and that, where two votes for one person are found in the same envelope, one shall be rejected, and that, where two votes for different persons are cast, both shall be rejected; the envelopes to be of a uniform character, furnished by the Sergeant-at-Arms." At the ballot that ensued the votes were: Whole number, 384; necessary to a choice, 193; Charles Sumner, 193; R. C. Winthrop, 166; H. W. Bishop, 11; S. C. Phillips, 4; Caleb Cushing, 3; Isaac Davis, 3; John Mills, 1; H. H. Childs, 1; N. P. Banks, Jr., 1; B. F. Hallett, 1. There were also two blanks, not counted, making 386 who had voted. The Speaker read the report of the committee, and declared Mr. Sumner elected. The announcement was received with applause in the galleries, which the Speaker and Sergeant-at-Arms promptly suppressed. This was the twenty-sixth ballot.

The election had been so long in suspense, and had so much occupied the public mind, that the final result was received with much feeling. As the news spread, some were dejected and angry, others were joyous and satisfied. Mr Sumner heard of it while at the house of Hon. Charles F. Adams, in Boston, and there received the first congratulations. A proposition for a public demonstration at his own house in the evening he discountenanced, saying, according to the published report, that, while feeling grateful to friends for their kindness, he was unwilling to do or say anything that could be construed by any one as evidence of personal triumph, — that it was the triumph of the cause, but that his heart dictated silence. In the evening there was a meeting for congratulation in State Street, where speeches were made by Hon. Henry Wilson, Joseph Lyman, and Thomas Russell. Similar meetings were held in other towns of Massachusetts, on receiving the news. The crowd in State Street moved to the house of Mr. Sumner, but he had left the city; then to the house of Mr. Adams, who said that he "was glad of the opportunity to be able to congratulate his friends upon the glorious triumph of Liberty in the election of Mr. Sumner"; then to the house of Richard H. Dana, Jr., who, being out of town, was represented by his venerable father, who said that he had "kept his bed until noon through illness, but, on learning the news of the election of Mr. Sumner, he suddenly became better."

The language of leading journals attests the prevailing interest, and

the deep sense of the issue that had been tried. A few of these will be mentioned, beginning with the Free-Soil organ in Boston, which thus announced the result: "In congratulating the world on this event, we congratulate the defeated themselves: for, if they did but know it, there is no firm basis for property except the equal rights of man; there can be no durable Union contrary to our immortal Declaration of Independence and the solemn preamble of our Constitution. . . . . Those very men have the greatest reason to rejoice in our victory, for their *children*, if not for themselves."[1]

The same organ replied to the assaults on Mr. Sumner: "No man ever accepted office with cleaner hands than Charles Sumner. He consented to receive the nomination with extreme reluctance. His pursuits, his tastes, and aspirations were in a different direction. He earnestly entreated his friends to select some other candidate. After he was nominated, and an onslaught unprecedented for ferocity and recklessness in political warfare had seemed to render his election impossible, unless he would authorize some qualification of the alleged obnoxious doctrines of his speeches, particularly of his last Faneuil-Hall speech, Mr. Sumner refused to retract, qualify, or explain. Ten lines from his pen — lines that a politician might have written without even the appearance of a change of sentiment — would have secured his election in January. No solicitation, of friends or opponents, could extort a line. A delegation of Hunkers applied to him for a few words to cover their retreat; in reply, he stated that he had no pledges to give, no explanations to make; he referred them to his published speeches for his position, and added, that he had not sought the office, but, if it came to him, it must find him an independent man. To another Democrat, who called on him on the same errand, he said, 'If by walking across my office I could secure the Senatorship, I would not take a step.' In February he placed in the hands of General Wilson a letter authorizing that gentleman to withdraw his name, whenever, in his judgment, the good of the cause should require it."[2]

The *National Era*, edited by Dr. Bailey, and the organ of the Free-Soil party at Washington, after speaking of Mr. Sumner in most flattering terms, proceeded as follows: "When it is considered that he is the exponent and advocate of opinions and measures which Mr. Webster has renounced and is seeking to put down, that the whole weight of the influence of this gentleman, with that of the cotton interest, the Administration, and Hunker Democracy, has been brought to bear against him, that at no time has he consented to qualify any word he has ever written or spoken on the questions at issue between him and his opponents, or to

[1] Daily Commonwealth, April 25, 1851. [2] Ibid., April 28, 1851.

give a single pledge, direct or indirect, respecting his course, his election must be regarded as one of the most brilliant, honorable, and decisive triumphs yet achieved by the opponents of Slavery and Conservatism." [1]

The *Tribune* in New York, though closely allied with the Whig party, rendered justice to Mr. Sumner. "We do not know the man who has entered the Senate under auspices so favorable to personal independence as Mr. Sumner. He has not sought the office, has not made an effort for its acquisition. No pledge has he given to any party or any person upon any question or measure. When asked as to the course he should pursue as Senator, his answer has been a reference to his past acts and published writings; in them were the only promises he had to offer. Though it would have been easy for him to secure the election three months ago by the slightest shadow of a concession to some of the Hunker members of the Legislature, he has steadily refused to say or do anything that could be construed in that manner. To every overture he has replied, that, if chosen, it must be on the footing of absolute independence, — that the Senatorship must come to him, and not he pursue the Senatorship. Such stern adherence to what he considered the path of duty and manliness has thus delayed his election. But it has not prevented it, and now Mr. Sumner enters the Senate free of all trammels whatever. This it is especially which makes us rejoice at the event. It is a new thing in our recent politics, and the loftiest success we can wish him in his Congressional career is an unflinching preservation of the same spirit and conduct." [2]

The London *Times* had a leader on the election, where, among other things, it said: "He was opposed by the Protectionists of Massachusetts as a partisan of greater freedom of trade, and by the adherents of the Government as an opponent of the Fugitive Slave Act. Yet such was the strength of feeling in Massachusetts on that point alone, that the Free-Soil party have succeeded in sending to the Senate the most active and able representative of their cause, and Mr. Sumner enters upon his ostensible political career under these remarkable and flattering circumstances. . . . . The election of Mr. Sumner to the Senate is everywhere regarded as an emphatic declaration, on the part of his own State, that the law is at least not to remain in its present form unassailed. The South responds to such an election by louder declarations of its resistance to all infractions on its local institutions, even at the sacrifice of the integrity of the Union." [3]

[1] National Era, May 1, 1851.
[2] New York Tribune, April 25, 1851.
[3] London Times, May 24, 1851.

Congratulations came from every quarter. They are alluded to here only because they belong to the history of this election. Some of them are given. One of the earliest was from Richard H. Dana, the scholar, and father of the eminent lawyer, who wrote: "I am thankful that Massachusetts is to speak through you in Washington, — through one whom neither West nor South will be able to win over or to browbeat." John G. Whittier wrote: "I rejoice, that, unpledged, free, and without a single concession or compromise, thou art enabled to take thy place in the Senate. I never knew such a general feeling of real heart pleasure and satisfaction as is manifested by all except inveterate Hunkers in view of thy election. The whole country is electrified by it. Sick abed, I heard the guns, Quaker as I am, with real satisfaction." William C. Bryant wrote: "I am glad that my native State is once more worthily represented in the United States Senate." John Bigelow, who was at the time associated with Mr. Bryant in the *Evening Post*, wrote: "I was quite overcome when I read the despatch which announced your election; and when the news was communicated through the building, it gave everybody else, including printers and clerks, almost as much pleasure as to me." Epes Sargent, who edited a Whig paper, wrote: "My private acquaintance is a sufficient assurance that your public course will be honorable and patriotic." Neal Dow wrote: "I thank God Massachusetts has at last done something effectual to redeem her character. I am sure that upon the floor of the Senate you will not forget to assert the rights of your State, and maintain with firmness and dignity the great principles upon which a free government *should be* based." Mr. Chase wrote: "*Laus Deo!* From the bottom of my heart I congratulate you — no, not you, but all friends of Freedom everywhere — upon your election to the Senate." Mr. Giddings wrote from Ohio: "A most intense interest was felt in this whole region, and I have seen no event which has given greater joy to the population generally." Judge Jay wrote: "May God enable you to leave the public service with a conscience and a reputation as unsullied as those you carry with you!" John Jay telegraphed: "Your election has made us most happy and thankful." Elihu Burritt, who was then in England, wrote: "My soul is gladdened to great and exceeding joy at the news of your election to fill the place of the late Daniel Webster. It has been hailed by the friends of human freedom and progress in this country with exultation. There are more eyes and hearts fixed upon your course than upon that of any man in America." Nobody expressed himself more cordially than John Van Buren, who wrote at once: "You will need no assurance of how delighted I was to hear that you were in fact a Senator from Massachusetts for six years"; and in another letter he said: "I was as much pleased with seeing your frank as I was with the inside of your

note. Independent of the fact that it proves your election to the United States Senate, the inscription, '*Free* Charles Sumner,' seems to me mighty pretty reading."

This history brings us to the Letter of Acceptance addressed to the Legislature, which was read in the two Houses, — in the Senate by Hon. Henry Wilson, President, and in the House of Representatives by Hon. N. P. Banks, Speaker. In addressing the Legislature directly Mr. Sumner follows the precedent of John Quincy Adams, in 1808, resigning his seat in the Senate.

FELLOW-CITIZENS OF THE SENATE AND HOUSE OF REPRESENTATIVES: —

BY the hands of the Secretary of the Commonwealth I have received a certificate, that by concurrent votes of the two branches of the Legislature, namely, by the Senate on the 22d day of January, and the House of Representatives on the 24th day of April, in conformity to the provisions of the Constitution and Laws of the United States, I was duly elected a Senator to represent the Commonwealth of Massachusetts in the Senate of the United States for the term of six years, commencing on the 4th day of March, 1851.

If I were to follow the customary course, I should receive this in silence. But the protracted and unprecedented contest which ended in my election, the interest it awakened, the importance universally conceded to it, the ardor of opposition and the constancy of support which it aroused, also the principles which more than ever among us it brought into discussion, seem to justify, what my own feelings irresistibly prompt, a departure from this rule. If, beyond these considerations, any apology is needed for thus directly addressing the Legislature, I may find it in the example of an illustrious predecessor, whose clear and venerable name will be a sufficient authority.

The trust conferred on me is one of the most weighty which a citizen can receive. It concerns the grandest interests of our own Commonwealth, and also of the Union in which we are an indissoluble link. Like every post of eminent duty, it is a post of eminent honor. A personal ambition, such as I cannot confess, might be satisfied to possess it. But when I think what it requires, I am obliged to say that its honors are all eclipsed by its duties.

Your appointment finds me in a private station, with which I am entirely content. For the first time in my life I am called to political office. With none of the experience possessed by others to smooth the way of labor, I might well hesitate. But I am cheered by the generous confidence which throughout a lengthened contest persevered in sustaining me, and by the conviction, that, amidst all seeming differences of party, the sentiments of which I am the known advocate, and which led to my original selection as candidate, are dear to the hearts of the people throughout this Commonwealth. I derive, also, a most grateful consciousness of personal independence from the circumstance, which I deem it frank and proper thus publicly to declare and place on record, that this office comes to me unsought and undesired.

Acknowledging the right of my country to the service of her sons wherever she chooses to place them, and with a heart full of gratitude that a sacred cause is permitted to triumph through me, I now accept the post of Senator.

I accept it as the servant of Massachusetts, mindful of the sentiments solemnly uttered by her successive Legislatures, of the genius which inspires her history,

and of the men, her perpetual pride and ornament, who breathed into her that breath of Liberty which early made her an example to her sister States. In such a service, the way, though new to my footsteps, is illumined by lights which cannot be missed.

I accept it as the servant of the Union, bound to study and maintain the interests of all parts of our country with equal patriotic care, to discountenance every effort to loosen any of those ties by which our fellowship of States is held in fraternal company, and to oppose all *sectionalism*, in whatsoever form, whether in unconstitutional efforts by the North to carry so great a boon as Freedom into the Slave States, in unconstitutional efforts by the South, aided by Northern allies, to carry the *sectional* evil of Slavery into the Free States, or in any efforts whatsoever to extend the *sectional* domination of Slavery over the National Government. With me the Union is twice blessed: first, as powerful guardian of the repose and happiness of thirty-one States, clasped by the endearing name of country; and next, as model and beginning of that all-embracing Federation of States, by which unity, peace, and concord will finally be organized among the Nations. Nor do I believe it possible, whatever the delusion of the hour, that any part can be permanently lost from its well-compacted bulk. *E Pluribus Unum* is stamped upon the national coin, the national territory, and the national heart. Though composed of many parts united into one, the Union is separable only by a crash which shall destroy the whole.

Entering now upon the public service, I venture to bespeak for what I do or say that candid judgment which I trust always to have for others, but which I am

well aware the prejudices of party too rarely concede. I may fail in ability, but not in sincere effort, to promote the general weal. In the conflict of opinion, natural to the atmosphere of liberal institutions, I may err; but I trust never to forget the prudence which should temper firmness, or the modesty which becomes the consciousness of right. If I decline to recognize as my guides the leading men of to-day, I shall feel safe while I follow the master principles which the Union was established to secure, leaning for support on the great Truimvirate of American Freedom, — Washington, Franklin, and Jefferson. And since true politics are simply morals applied to public affairs, I shall find constant assistance from those everlasting rules of right and wrong which are a law alike to individuals and communities.

Let me borrow, in conclusion, the language of another: "I see my duty, — that of standing up for the liberties of my country; and whatever difficulties and discouragements lie in my way, I dare not shrink from it; and I rely on that Being who has not left to us the choice of duties, that, whilst I conscientiously discharge mine, I shall not finally lose my reward." These are words attributed to Washington, in the early darkness of the American Revolution. The rule of duty is the same for the lowly and the great; and I hope it may not seem presumptuous in one so humble as myself to adopt his determination, and to avow his confidence.

I have the honor to be, fellow-citizens,
With sincere regard,
Your faithful friend and servant,

CHARLES SUMNER.

BOSTON, May 14, 1851.

THE DECLARATION OF INDEPENDENCE AND THE CONSTITUTION OF THE UNITED STATES OUR TWO TITLE-DEEDS.

LETTER TO THE MAYOR OF BOSTON, FOR JULY 4, 1851.

FROM the beginning, Mr. Sumner never missed an opportunity, in speech or letter, of invoking the Declaration of Independence as a rule of action. The following letter is an example.

BOSTON, July 3, 1851.

DEAR SIR,—I have been honored by an official invitation to unite in the celebration by our City Council of the approaching anniversary of American Independence.

Though it will not be in my power to partake of this celebration, I wish not to seem indifferent to the kind attentions of your Committee or to the hospitality of Boston.

I venture to inclose a sentiment, suggested particularly by the occasion, and in harmony, I trust, with the convictions of all sincere lovers of the Union.

I have the honor to be, dear Sir,
Your faithful servant,

CHARLES SUMNER.

The Declaration of Independence, and the Constitution of the United States, — the two immortal title-deeds of American liberties. Defenders of the Constitution, let us not forget the principles of the Declaration, but, for the equal support of both, in the spirit of our fathers, without compromise, and with a firm reliance on the protection of Divine Providence, mutually pledge to each other our lives, our fortunes, and our sacred honor.

HON. JOHN P. BIGELOW, &c., &c.

POSITION OF THE AMERICAN LAWYER.

LETTER TO THE SECRETARY OF THE STORY ASSOCIATION, JULY 15, 1851.

BOSTON, July 15, 1851.

DEAR SIR, — As a faithful pupil of the Law School, and an attached friend, during life, of the founder, whose illustrious name your Association bears, I feel a thrill at every act or word which does them honor. And since I may not be able to be present at your festival, I venture to send congratulations on the happy auspices of the day, and — mindful that I address a professional assembly — to inclose a sentiment commemorating the dignity and the duties of the American Lawyer.

A brief personal experience will properly introduce it. Some years ago, while at Heidelberg, in Germany, it was my fortune to see much of Thibaut and Mittermaier, both jurists of eminent fame: the first — now dead — renowned for learning in the Roman Law, and for early and constant support of a just scheme for the reduction of the unwritten law to the certainty of a written text; and the other, who is still spared, the greatest living master of Criminal Law, and of the various systems of Foreign Jurisprudence. Next after the aristocracy of birth, they were unquestionably at that moment among the most conspicuous men of Germany.

In the course of a long conversation, chiefly on matters of juridical interest, in the freedom of social intercourse at dinner, one of them asked with regard to the position of the American Lawyer, and both seemed earnest for my answer. I promptly replied: "No person is his superior. His position, Gentlemen, if you will pardon me for saying it, is what yours would be in Germany, if there were no aristocracy of birth." Both seemed penetrated by this allusion, and, looking each other in the face, exclaimed at once, in apparent consciousness of their true rank: "That is very high indeed!"

The sentiment which I now submit was suggested by this incident.

I have the honor to be, dear Sir,
Very faithfully yours,

CHARLES SUMNER.

TO THE SECRETARY OF THE STORY ASSOCIATION.

The American Lawyer: Distinguished by the lofty sphere of his influence, may he find in it new motive to the cultivation of those moral excellences, and those generous virtues of the heart, which give the truest elevation to the character! *Nobilitas sola est atque unica virtus.*

SYMPATHY WITH THE RIGHTS OF MAN EVERYWHERE.

LETTER TO A MEETING AT FANEUIL HALL, OCTOBER 27, 1851.

THIS meeting was held to consider the case of Smith O'Brien and his fellow-exiles in Australia, and to ask the intercession of our Government in their behalf. Governor Boutwell presided and addressed the meeting.

BOSTON, October 27, 1851.

DEAR SIR, — It will not be in my power to be present at Faneuil Hall this evening; nor am I entirely satisfied that it would be proper for me, holding the official position I now do, to take part in the proceeding which you propose to institute.

But though not present with you, and not undertaking to express any opinion on the precise question of national duty, I wish it to be understood that I can never fail to unite in every earnest, manly word by which the sympathies of our country are extended to all, in whatever land, who are defending the Rights of Man. To this cause we are pledged as a nation by the Declaration of Independence; and my heart warmly responds to the vow.

Nor can I forbear to add, that the clemency which you entreat from a powerful government towards those whom it classes as political offenders is in harmony with the Spirit of the Age and with the lessons of Christianity. It is a grace never otherwise than honorable to ask and honorable to bestow: —

"And 't is in crowns a nobler gem
To grant a pardon than condemn."

A recent instance enforces the appeal. Kossuth has at last passed from the house of bondage. His emancipation, promoted by the aspirations, the prayers, and the express intervention of our Republic, is an example to all nations, — while the brightness of his fame shows how vain it is for any earthly edict to stigmatize as crime a sincere and generous effort for Human Freedom. Austria brands the great Hungarian as traitor; but an enlightened Public Opinion, the predestined queen of the civilized world, already re-judges the justice of the tyrant government. To the judgments of this exalted authority mankind must bow. No people, for the sake of any seeming temporary expediency, can afford to sacrifice a principle of justice or a sentiment of humanity, and thus to peril the everlasting verdict of History.

In reaching across the sea as far as distant Turkey, to plead for the freedom of the fugitive Kossuth, our Republic has done well; and the Mahometan Sultan, in consenting to his liberation, at extraordinary hazards, has taught a lesson of magnanimity to Christian nations.

The step we have thus taken cannot be the last. With increasing power are increasing duties. The influence we now wield is a sacred trust, to be exercised firmly and discreetly, in conformity with the Laws of Nations, and with an anxious eye to the peace of the world, but always so as most to promote Human Rights. Our example can do much. The magnetism of our national flag will be felt wherever it floats; individual citizens may labor faithfully; but all these will be quickened incalculably by a system of conduct, on the

part of our Government, at home and abroad, which, while avoiding all improper interference with other countries, and teaching the beauty of honesty, shall show a prompt and benevolent sympathy with those vital principles without which our Republic is but a name.

In this work, Irishmen, and the children and grandchildren of Irishmen, scattered in millions throughout the land, can help. Their native love of Liberty and hatred of Oppression will here find opportunity for action.

Believe me, dear Sir,

Very faithfully yours,

CHARLES SUMNER.

TO THE COMMITTEE.

WELCOME TO KOSSUTH.

Speech in the Senate, December 10, 1851.

Mr. Sumner's credentials as Senator were presented at the opening of the 32d Congress, December 1, 1851, when he took the oath of office. Among those who took the oath on the same day were Hon. Benjamin F. Wade, of Ohio, Hon. Hamilton Fish, of New York, and Hon. Stephen R. Mallory, of Florida, afterward Secretary of the Navy in the Rebel Government. The seat of the last was contested, and the question on his reception drew forth Mr. Clay, who was present for the last time in the Senate. Though living till June, he never again appeared in the Chamber. On the arrangement of the Committees, Mr. Sumner found himself at the bottom of the Committee on Revolutionary Claims and the Committee on Roads and Canals.

On the first day of the session a joint resolution was announced by Mr. Foote, of Mississippi, providing for the reception and entertainment of Louis Kossuth, the recent head of the revolutionary government in Hungary. Governor Kossuth, having escaped from Hungary, had found refuge in Turkey, where he was received on board one of our ships of war. After an interesting visit in England, where he addressed large public audiences with singular power and eloquence, he arrived in New York. Interest in the cause which he so ably represented, and personal sympathy with the exile, quickened by his genius, found universal expression in the country ; but there was a protracted debate in the Senate before the vote was taken.

The debate proceeded on a resolution introduced by Mr. Seward, December 8th, as follows : —

"*Resolved, &c.*, That the Congress of the United States, in the name and behalf of the people of the United States, give to Louis Kossuth a cordial welcome to the capital and to the country, and that a copy of this resolution be transmitted to him by the President of the United States."

On the same day, Mr. Shields, of Illinois, introduced a resolution in the following terms : —

"*Resolved*, That a committee of three be appointed by the Chair to wait on Louis Kossuth, Governor of Hungary, and introduce him to the Senate."

December 9th, Mr. Berrien, of Georgia, addressed the Senate at length in opposition to action by Congress, and, in closing his speech, moved the following amendment : —

"*And be it further Resolved*, That the welcome thus afforded to Louis Kossuth be extended to his associates who have landed on our shores; but while welcoming these Hungarian patriots to an asylum in our country, and to the protection which our laws do and always will afford to them, it is due to candor to declare that it is not the purpose of Congress to depart from the settled policy of this Government, which forbids all interference with the domestic concerns of other nations."

The final question was not reached till December 12th, when the amendment of Mr. Berrien was rejected : yeas 15, nays 26. The question then recurred on the resolution of Mr. Seward, which was adopted : yeas 33, nays 6. The resolution passed the House of Representatives, and was signed by the President.

On the 10th of December Mr. Sumner spoke. It was his first speech in the Senate. He rose to speak late in the afternoon of the day before, but gave way to an adjournment, which was moved by Mr. Rusk, of Texas. The next day, on motion of Mr. Seward, the Senate proceeded to the consideration of the resolution, when Mr. Sumner took the floor.

The following characteristic letter from Mr. Choate, one of his predecessors as Senator from Massachusetts, illustrates the reception of the speech in the country, besides being a souvenir of friendly relations amidst political differences.

"Boston, December 29, 1851.

"My dear Mr. Sumner, —

"I thank you for the copy of your beautiful speech, and for the making of it. All men say it was a successful one, parliamentarily expressing it ; and I am sure it is sound and safe, steering skilfully between *cold-shoulderism* and *inhospitality*, on the one side, and the splendid folly and wickedness of coöperation, on the other. Cover the Magyar with flowers, lave him with perfumes, serenade him with eloquence, and let him go home *alone*, — if he will not live here. Such is all that is permitted to wise states, aspiring to the 'True Grandeur.'

"I wish to Heaven you would write me *de rebus Congressus*. How does the Senate strike you ? The best place this day on earth for reasoned and thoughtful, yet stimulant public speech. Think of that.

"Most truly yours — *in the Union*, —

"Rufus Choate."

MR. PRESIDENT, — Words are sometimes things; and I cannot disguise from myself that the resolution in honor of Louis Kossuth now pending before the Senate, when finally passed, will be an act of no small significance in the history of our country. The Senator from Georgia [Mr. BERRIEN] was right, when he said that it was no unmeaning compliment. Beyond its immediate welcome to an illustrious stranger, it will help to combine and direct the sentiments of our own people everywhere; it will inspire all in other lands who are engaged in the contest for freedom; it will challenge the disturbed attention of despots; and will become a precedent, whose importance will grow, in the thick-coming events of the future, with the growing might of the Republic. Therefore it becomes us to consider well what we do, and to understand the grounds of our conduct.

I am prepared to vote for it without amendment or condition of any kind, and on reasons which seem to me at once obvious and conclusive. In assigning these I shall be brief; and let me say, that, novice as I am in this hall, and, indeed, in all legislative halls, nothing but my strong interest in the question as now presented, and a hope to say something directly upon it, could prompt me thus early to mingle in these debates.

The case seems to require a statement, rather than an argument. As I understand, the last Congress requested the President to authorize the employment of a national vessel to receive and convey Louis Kossuth to the United States. That honorable service was performed, under the express direction of the President, and in pur-

suance of the vote of Congress, by one of the best appointed ships of our navy, — the steam-frigate Mississippi. Far away from our country, in foreign waters, on the current of the Bosphorus, the Hungarian chief, passing from his Turkish exile, first pressed the deck of this gallant vessel, first came under the protection of our national flag, and for the first time in his life rested beneath the ensign of an unquestioned Republic. From that moment he became our guest. The Republic — which thus far he had seen only in delighted dream or vision — was now his host; and though this relation was interrupted for a few weeks by his wise and brilliant visit to England, yet its duties and its pleasures, as I confidently submit, are not yet ended. The liberated exile is now at our gates. Sir, we cannot do things by halves; and the hospitality, which, under the auspices of Congress, was thus begun, must, under the auspices of Congress, be continued. The hearts of the people are already open to receive him; Congress cannot turn its back upon him.

I would join in this welcome, not merely because it is essential to complete and crown the work of the last Congress, but because our guest deserves it. The distinction is great, I know; but it is not so great as his deserts. He deserves it as the early, constant, and incorruptible champion of the Liberal Cause in Hungary, who, while yet young, with unconscious power, girded himself for the contest, and by a series of masterly labors, with voice and pen, in parliamentary debate and in the discussions of the press, breathed into his country the breath of life. He deserves it by the great principles of true democracy which he caused to be recognized, — representation of the people without distinction of

rank or birth, and *Equality before the law.*[1] He deserves it by the trials he has undergone, in prison and in exile. He deserves it by the precious truth he now so eloquently proclaims, of the Fraternity of Nations.

As I regard his course, I am filled with reverence and awe. I see in him, more than in any other living man, the power which may be exerted by a single, earnest, honest soul in a noble cause. In himself he is more than a whole cabinet, more than a whole army. I watch him in Hungary, while, like Carnot in France, he "organizes victory"; I follow him in exile to distant Mahometan Turkey, and there find him, with only a scanty band, in weakness and confinement, still the dread of despots; I sympathize with him in his happy release; and now, as he comes more within the sphere of immediate observation, amazement fills us all in the contemplation of his career, while he proceeds from land to land, from city to city, and, with words of matchless power, seems at times the fiery sword of Freedom, and then the trumpet of resurrection to the Nations, —

"Tuba mirum spargens sonum."[2]

I know not how others are impressed; but I call to mind no incident in history, no event of peace or war, — certainly none of war, — more strongly calculated, better adapted, to touch and exalt the imagination and the heart than his recent visit to England. He landed on the southern coast, not far from where William of Normandy, nearly eight centuries ago, had landed, — not far from where, nineteen centuries ago, Julius Cæsar had landed also; but William on the field of Hastings, and Cæsar in his adventurous expedition, made no conquest

[1] This important phrase is thus early introduced.
[2] Dies Iræ, st. 3.

comparable in grandeur to that achieved by the unarmed and unattended Hungarian. A multitudinous people, outnumbering far the armies of those earlier times, was subdued by his wisdom and eloquence; and this exile, proceeding from place to place, traversing the country, at last, in the very heart of the Kingdom, threw down the gauntlet of the Republic. Without equivocation, amidst the supporters of monarchy, in the shadow of a lofty throne, he proclaimed himself a republican, and proclaimed the republic as his cherished aspiration for Hungary. And yet, amidst the excitements of this unparalleled scene, with that discretion which I pray may ever attend him as a good angel, — the ancient poet aptly tells us that no Divinity is absent where Prudence is present,[1] — he forbore all suggestion of interference with the institutions of the country whose guest he was, recognizing that vital principle of self-government by which every state chooses for itself the institutions and rulers it prefers.

Such a character, thus grandly historic, — a living Wallace, a living Tell, I had almost said a living Washington, — deserves our homage. Nor am I tempted to ask if there be any precedent for the resolution now under consideration. There is a time for all things; and the time has come for us to make a precedent in harmony with his unprecedented career. The occasion is fit; the hero is near; let us speak our welcome. It is true, that, unlike Lafayette, he has never directly served our country; but I cannot admit that on this account he is less worthy. Like Lafayette, he perilled life and all; like Lafayette, he did penance in an Austrian dungeon; like Lafayette, he served the cause of Free-

1 "Nullum numen abest, si sit Prudentia." — JUVENAL, *Sat.* X. 365.

dom; and whosoever serves this cause, wheresoever he may be, in whatever land, is entitled, according to his works, to the gratitude of every true American bosom, of every true lover of mankind.

The resolution before us commends itself by simplicity and completeness. In this respect it seems preferable to that of the Senator from Illinois [Mr. SHIELDS]; nor is it obnoxious to objections urged against that of the Senator from Mississippi [Mr. FOOTE]; and I do not see that it can give any just umbrage, in our diplomatic relations, even to the sensitive representative of the House of Austria. Though we have the high authority of the President, in his Message, for styling our guest "Governor," — a title which seems to imply the *de facto* independence of Hungary, when it is known that our Government declined to acknowledge it, — the resolution avoids this difficulty, and speaks of him without title of any kind, — simply as a private citizen. As such, it offers him welcome to the capital and to the country.

The Comity of Nations I respect. To the behests of the Law of Nations I profoundly bow. In our domestic affairs all acts are brought to the Constitution, as to a touchstone; so in our foreign affairs all acts are brought to the touchstone of the Law of Nations, — that supreme law, the world's collected will, which overarches the Grand Commonwealth of Christian States. What that forbids I forbear to do. But no text of this voluminous code, no commentary, no gloss, can be found, which forbids us to welcome any exile of Freedom.

Looking at this resolution in its various lights, as a carrying out of the act of the last Congress, as justly due to the exalted character of our guest, and as proper

in form and consistent with the Law of Nations, it seems impossible to avoid the conclusion in its favor. On its merits it would naturally be adopted. And here I might stop.

An appeal is made against the resolution on grounds which seem to me extraneous and irrelevant. There is an attempt to involve it with the critical question of intervention by our country in European affairs; and recent speeches in England and New York are adduced to show that such intervention is sought by our guest. It is sufficient to say, in reply to this suggestion, introduced by the Senator from Georgia [Mr. BERRIEN] with a skill which all might envy, and adopted by the Senator from New Jersey [Mr. MILLER], *that no such intervention is promised or implied by the resolution.* It does not appear on the face of the resolution; it is not in any way suggested by the resolution, directly or indirectly. It can be found only in the imagination, the anxieties, or the fears of Senators. It is a mere ghost, and not a reality. As such we may dismiss it. But I feel strongly on this point, and desire to go further. Here, again, I shall be brief; for the occasion allows me to give conclusions only, and not details.

While thus warmly, with my heart in my hand, joining in this tribute, I wish to be understood as in no respect encouraging any idea of belligerent intervention in European affairs. Such a system would have in it no element of just self-defence, and would open vials of perplexities and ills which I trust our country will never be called to affront. I inculcate no frigid isolation. God forbid that we should ever close our ears to the cry of distress, or cease to swell with indignation at the steps of tyranny! In the wisdom of Washington we find

perpetual counsel. Like Washington, in his eloquent words to the Minister of the French Directory, I would offer sympathy and God-speed to all, in every land, who struggle for Human Rights; but, sternly as Washington on another occasion, against every pressure, against all popular appeals, against all solicitations, against all blandishments, I would uphold with steady hand the peaceful neutrality of the country. Could I now approach our mighty guest, I would say to him, with the respectful frankness of a friend: "Be content with the outgushing sympathy which you now inspire everywhere throughout this wide-spread land, and may it strengthen your soul! Trust in God, in the inspiration of your cause, and in the Great Future, pregnant with freedom for all mankind. But respect our ideas, as we respect yours. Do not seek to reverse our traditional, established policy of peace. *Do not, under the too plausible sophism of upholding non-intervention, provoke American intervention on distant European soil.* Leave us to tread where Washington points the way."

And yet, with these convictions, Mr. President, which I now most sincerely express, I trust the Senator from Georgia [Mr. BERRIEN] will pardon me when I say I cannot join in his proposed amendment, — and for this specific reason. To an act of courtesy and welcome it attaches a condition, which, however just as an independent proposition, is most ungracious in such connection. It is out of place, and everything out of place is to a certain extent offensive. If adopted, it would impair, if not destroy, the value of our act. A generous hospitality will not make terms or conditions with a guest; and such hospitality I trust Congress will tender to Louis Kossuth.

OUR COUNTRY ON THE SIDE OF FREEDOM, WITHOUT BELLIGERENT INTERVENTION.

LETTER TO A PHILADELPHIA COMMITTEE, DECEMBER 23, 1851.

WHEN this letter was written, Kossuth was engaged in the effort to enlist our country in active measures for the liberation of Hungary.

WASHINGTON, December 23, 1851.

DEAR SIR, — It is not in my power to unite with the citizens of Philadelphia in their banquet to Governor Kossuth. But though not present in person, my heart will be with them in every word of honor to that illustrious man, in every assurance of sympathy for his great cause, and in every practical effort to place our country openly on the side of Freedom.

Among citizens all violence is forbidden by the Municipal Law, which is enforced by no private arm, but by the sheriff, in the name of the Government, and under the sanctions of the magistrate. So, among the Nations, all violence, and especially all belligerent intervention, should be forbidden by International Law; and I trust the day is not far distant when this prohibition will be maintained by the Federation of Christian States, with an *executive power* too mighty for any contumacious resistance.

I have the honor to be, Gentlemen,
Your faithful servant,

CHARLES SUMNER.

TO THE COMMITTEE.

CLEMENCY TO POLITICAL OFFENDERS.

LETTER TO AN IRISH FESTIVAL AT WASHINGTON, JANUARY 22, 1852.

AT the festival the following toast was given : "*Hon. Charles Sumner:* In the Cradle of Liberty the cause of the exile will ever find a friend."

The following letter was then read.

WASHINGTON, January 22, 1852.

GENTLEMEN, — It is not in my power to unite in your festal meeting this evening. But be assured I shall rejoice in every word of affection and honor for Ireland, and of sympathy with all her children, especially those patriots who have striven and suffered for the common good.

In answer to your express request, I beg leave to inclose a sentiment, which I trust may find a response at once from our own Government and from that of Great Britain.

I have the honor to be, Gentlemen,

Your faithful servant,

CHARLES SUMNER.

JOHN T. TOWERS, Esq., Chairman, &c.

Clemency: A grace which it can never be otherwise than honorable to ask and honorable to grant.

> "'T is mightiest in the mightiest; it becomes
> The thronèd monarch better than his crown."

JUSTICE TO THE LAND STATES, AND POLICY OF ROADS.

SPEECHES IN THE SENATE ON THE IOWA RAILROAD BILL, JANUARY 27, FEBRUARY 17, AND MARCH 16, 1852.

THE Senate having under consideration the "bill granting the right of way, and making a grant of land to the State of Iowa, in aid of the construction of certain railroads in said State," Mr. Sumner entered into the debate, speaking several times. His remarks were much noticed at the time in the Senate, and also in the country, especially in the West. At home in Massachusetts political opponents seized the occasion for criticism, and resolutions on the subject were introduced into the Legislature of Massachusetts. He spoke first January 27, 1852, as follows.

MR. PRESIDENT, — This bill is important by itself, inasmuch as it promises to secure the building of a railroad, at large cost, for a long distance, through a country not thickly settled, in a remote corner of the land. It is more important still as a precedent for a series of similar appropriations in other States. In this discussion, then, we have before us, at the same time, the special interests of the State of Iowa, traversed by this projected road, and also the great question of the public lands.

I have no inclination to enter into these matters at length, even if I were able; but entertaining no doubt as to the requirements of policy and of justice in the present case, and in all like cases, — seeing my way clearly

before me by lights that cannot deceive, — I hope in a few words to exhibit these requirements and to make this way manifest to others. I am especially moved to do so by the tone of remark often heard out of the Senate, and sometimes even here, begrudging these appropriations, and charging particular States for which they are made with undue absorption of the national property. It is sometimes said — not in this body, I know — that "the West is stealing the public lands"; and the Senator from Virginia [Mr. HUNTER], who expresses himself with frankness and moderation worthy of regard, in discussing this very measure, distinctly says that "we are squandering away the public lands"; and he complains that such appropriations are partial, "because very large amounts of land are distributed to those States in which they lie, while nothing is given to the old States." And the Senator from Kentucky [Mr. UNDERWOOD], taking up this strain, dwells at great length, and in every variety of expression, on the alleged partiality of the distribution.

Now I know full well that the States in which these lands lie need no defender like myself. But, as a Senator from one of the old States, I desire thus early to declare my dissent from these views, and the reasons for this dissent. Beyond a general concern that the public lands, of which the Union is now almoner, custodian, and proprietor, should be administered freely, generously, bountifully, in such wise as most to promote their settlement, and to build upon them towns, cities, and States, the nurseries of future empire, — beyond this concern, which leads me gladly to adopt the proposition in favor of actual settlers brought forward by the Senator from Wisconsin [Mr. WALKER], I find

clear and special reason for supporting the measure before the Senate in an undeniable rule of justice to the States in which the lands lie.

Let me speak, then, for *justice* to the Land States. And in doing so I wish to present an important, and, as it seems to me, decisive consideration, — not adduced thus far in this debate, nor do I know that it has been argued in any former discussion, — *founded on the exemption from taxation enjoyed by the national lands in the several States, and the unquestionable value of this franchise.* The subject naturally presents itself under two heads: *first*, the origin and nature of this franchise; and, *secondly*, its extent and value, after deducting all reservations and grants to the several States.

I. In the *first* place, as to the origin and nature of the immunity enjoyed by the national domain in the several States.

The United States are proprietors of large tracts within the municipal and legislative jurisdiction of States, not held directly by virtue of any original prerogative or eminent domain, by any right of conquest, occupancy, or discovery, but under acts of cession from the old States, in which the lands were situated, and from foreign countries, recognized and confirmed in the statutes by which the different States have been constituted. Words determining this relation are found in the Ordinance of 1787, as follows: "The Legislatures of those districts or new States shall never interfere with *the primary disposal of the soil* by the United States in Congress assembled, nor with any regulations Congress may find necessary for securing the title in such soil to the *bona fide* purchasers." This provision is incorporated,

as an article of compact, in subsequent statutes under which the new States took their place in the Union. It is "the primary disposal of the soil," without any incident of *sovereignty*, which is here secured.

Regarding the United States, then, as simple proprietors, under the jurisdiction of the States, would they not be liable, in the discretion of the States, to the burdens of other proprietors, unless specially exempted? This exemption is conceded. In the Ordinance of 1787 it is expressly declared that "no tax shall be imposed on lands the property of the United States"; and this provision, like that already mentioned, was embodied in succeeding Acts of Congress by which new States were constituted. The fact that it was formally conceded and has been thus embodied seems to denote that such concession was regarded as necessary to secure the desired immunity. Indeed, from familiar principles of our jurisprudence, recognized by the Supreme Court, it is reasonable to infer, that, without such express exemption, this whole extent of territory would be within the field of local taxation, liable, like the lands of other proprietors, to all customary burdens and incidents.

Thus, in an early case of Pennsylvania, it is decided that the purchase of land by the United States would not alone be sufficient to vest them with the jurisdiction, or to oust the jurisdiction of the State, without being accompanied or followed by the consent of the Legislature of the State.[1] And it is judicially declared by the late Mr. Justice Woodbury, in a well-considered case: —

"Where the United States own land situated within the limits of particular States, and over which they have no

[1] See Commonwealth of Pennsylvania *v.* Young. 1 Kent's Com., 431.

cession of jurisdiction, for objects either special or general, little doubt exists *that the rights and remedies in relation to it are usually such as apply to other land-owners within the State.*" [1]

After setting forth certain rights of the United States, the learned judge proceeds: —

"All these rights exist in the United States for constitutional purposes, and without a special cession of jurisdiction; though it is admitted that other powers over the property and persons on such lands will, of course, remain in the States, till such a cession is made. Nothing passes without such a cession, except what is an incident to the title and purpose of the General Government." [2]

The Supreme Court give great eminence to the sovereign right of taxation in the States, saying: —

"Taxation is a sacred right, essential to the existence of Government, — an incident of sovereignty. The right of legislation is coextensive with the incident, to attach it upon all persons and property within the jurisdiction of a State." [3]

And again, the Court say in another case: —

"However absolute the right of an individual may be, it is still in the nature of that right that it must bear a portion of the public burdens, and that portion must be determined by the Legislature." [4]

In the same case, the Court, after declaring "that the taxing power is of vital importance, — that it is essential to the existence of Government, — that the relinquish-

[1] United States *v.* Ames, 1 Woodbury and Minot, 80.
[2] Ibid., 83.
[3] Dobbins *v.* Commissioners of Erie Co., 16 Peters, 447.
[4] Providence Bank *v.* Billings and Pittman, 4 Peters, 563.

ment of such a power is never to be assumed," add, cautiously, that they "will not say that a State may not relinquish it, — *that a consideration sufficiently valuable to induce a partial release of it may not exist.*"[1]

While thus upholding the right of taxation as one of the precious attributes belonging to the States, the Court, under the Constitution of the United States, properly exempt instruments and means of government; but they limit the exemption to these instruments and means. Thus it is expressly decided in a celebrated case,[2] that, while the Bank of the United States, being one of the necessary *instruments and means* to execute the sovereign powers of the nation, is not liable to taxation, yet the real property of the Bank is thus liable, in common with other real property in a particular State.

Now the lands held by the United States do not belong to *instruments and means* necessary and proper to execute the sovereign powers of the nation. In this respect they clearly differ from fortifications, arsenals, and navy-yards. They are strictly in the nature of *private property* belonging to the nation and situated within the jurisdiction of States. In excusing them from taxation, our fathers acted unquestionably according to the suggestions of prudence, but also under the influence of precedent, derived *at that time* from the prerogatives of the British Crown. It was an early prerogative, transmitted from feudal days, when all taxes were in the nature of aids and subsidies to the monarch, that the property of the Crown, of every nature, should be exempt from taxation. *But mark the change.* This ancient

[1] Providence Bank *v.* Billings and Pittman, 4 Peters, 561.
[2] McCulloch *v.* The State of Maryland, 4 Wheaton, 316.

feudal principle is not now the law of England. By the statute of 39 and 40 George III., chap. 88, passed thirteen years after the Ordinance of 1787, the lands and tenements purchased by the Crown out of the privy purse or other moneys not appropriated to any public service, or which came to the King from his ancestors or private persons, — in other words, lands and tenements in the nature of *private property*, — are subjected to taxation even while they belong to the Crown.

Thus the matter stands. Lands belonging to the nation, which, it seems, even royal prerogative at this day in England cannot save from taxation, are in our country, under express provisions of compact, early established, exempted from this burden. Now, Sir, I make no complaint; I do not suggest any change, nor do I hint any ground of legal title in the States. But I do confidently submit, that in this peculiar, time-honored immunity, originally claimed by the nation, and conceded by the States within which the public lands lie, there is ample ground of equity, under which these States may now appeal to the nation for assistance out of these public lands.

When I listen to comparisons discrediting these States by the side of the old States, when I hear it charged that they are constant recipients of the national bounty, and when I catch those sharper terms of condemnation by which they are characterized as "plunderers" and "robbers" and "pirates," I am forced to inquire whether the nation has not already received from these States something more than it has ever bestowed, even in its most liberal moods, — whether, at this moment, the nation is not *equitably* debtor to these States, and not these States debtors to the nation.

II. I am now brought to the *second* head of this inquiry, — that is, the extent and value of the immunity from taxation, after deducting all reservations and grants to the several States. Authentic documents and facts place these beyond question.

From the official returns of the Land Office in January, 1849,[1] it appears that the areas of the twelve Land States — Ohio, Indiana, Illinois, Missouri, Alabama, Mississippi, Louisiana, Michigan, Arkansas, Wisconsin, Iowa, and Florida — embrace 392,579,200 acres. California was not at that time a State of the Union. Of this territory, only 289,961,954 acres had been, in pursuance of the laws of the United States, surveyed, proclaimed, and put into the market. In some of the recent States, more than a moiety of the whole domain had never been brought into this condition. At the date of these official returns it continued still unconscious of the surveyor's chain. Thus, in Wisconsin, out of more than thirty-four millions of acres, only a little more than thirteen millions were proclaimed for sale; and in Iowa, the very State whose interests are now particularly in question, out of more than thirty-two millions of acres, only a little more than twelve millions were proclaimed for sale. I cannot doubt that in fact the aggregate of the public lands within the States at all times much exceeds the amount actually in the market; but since it may be said that lands not yet surveyed, proclaimed, and put into the market, though nominally under the jurisdiction of the State, must lie actually beyond the sphere of its influence, so as not to derive any appreciable advantage from the local government, and as I desire to hold this argument above every im-

[1] Exec. Doc., 30th Cong. 2d Sess., H. R. No. 12, Table 6, p. 255.

putation of exaggeration, — knowing full well that it can afford to be understated, — I forbear to take the larger amount as basis, but found my estimates upon the extent of territory actually proclaimed for sale, from the beginning down to January, 1849, amounting to 289,961,954 acres.

All these lands thus proclaimed have been exempt from taxation. But since they were proclaimed at different periods, and also sold at different periods, so far as they are sold, it is necessary, in arriving at the value of this immunity, to ascertain what is the average period during which the lands, after being put into the market, are in the possession of the United States. This we are able to do from official returns of the Land Office. Here is a table now before me, from which it appears, that, of the lands offered for sale during a period of thirty years, large quantities were, at the expiration of the period, still on hand. Of the fourteen millions offered in Ohio during this period, more than two millions remained, while, of the nineteen millions offered in Missouri, more than twelve millions remained. Of all the lands offered during this period of *thirty* years, more than half were still unsold.[1] And out of the aggregate of 289,961,954 acres proclaimed from the beginning down to January, 1849, notwithstanding the advancing tread of our thick-coming population, only 100,209,656 acres had been sold.[2] Now, without further pursuing these details, I assume, what cannot be questioned, as it is most clearly within the truth, that lands proclaimed are not all sold till after a period of fifty years. This estimate makes the average period during which the

[1] Exec. Doc., 30th Cong. 2d Sess., H. R. No. 12, Table 2, p. 210.
[2] Ibid., Table 6, p. 255.

lands, after being surveyed and proclaimed, are actually in the possession of the United States, and free from taxation, twenty-five years.

According to this estimate, 289,961,954 acres, proclaimed for sale, have been absolutely free from taxation during the space of twenty-five years; and yet, during this whole period, they have, without the ordinary consideration, enjoyed the protection of the State, with advantages and increased value from highways, bridges, and school-houses, all of which are supported by the adjoining proprietors, under the laws of the State, without assistance of any kind from the United States.

Such is the extent of this immunity. But, in order to determine its precise value, it is necessary to advance a step farther, and ascertain one other element: that is, the average annual tax on land in these States,—for instance, on the land of other non-residents. There are no official documents within my knowledge by which this can be determined. But, after inquiry of gentlemen, themselves landholders in these States, I have thought it might be placed, without risk of contradiction, at one cent an acre. Probably it is rather two, or even three cents; but, desiring to keep within bounds, I call it only one cent an acre. The annual tax on 289,961,954 acres, at the rate of one cent an acre, would be $2,899,619, and the sum-total of this tax for twenty-five years would amount to $72,490,475, being the apparent value of this immunity from taxation already enjoyed by the United States; or, if we call the annual tax two cents an acre, instead of one cent, we have nothing less than $144,980,950, of which the United States may now be regarded as trustees in *equity* for the benefit of the Land States.

Against this large sum I may be reminded of reservations and grants by the nation to the different States. These, when examined, do not materially interfere with the result. From the official returns of the Land Office, January, 1849,[1] we learn the precise extent of these reservations and grants down to that period. Here is the exhibit: —

	Acres.
Common Schools	10,807,958
Universities	823,950
Seat of Government	50,860
Salines	422,325
Deaf and Dumb Asylums	45,440
Internal Improvements	8,474,473
	20,625,006

This is all. In the whole aggregate only a little more than twenty millions of acres have been granted to these States. The value of this sum-total, if deducted from the estimated value of the franchise enjoyed by the nation, will still leave a very large balance to the credit of the Land States. Estimating the land at $1.25 an acre, all the reservations and grants will amount to no more than $25,781,257. Deducting this sum from $72,490,475, we have $46,709,218 to the credit of the Land States; or, if we place the tax at two cents an acre, more than double this sum.

This result leaves the nation so largely in debt to the Land States that it becomes of small importance to scan closely the character of these grants and reservations, to determine whether in large part they are not already satisfied by specific considerations on the part of the States. But the stress, which, in the course of this de-

[1] Exec. Doc., 30th Cong. 2d Sess., H. R. No. 12, Table 10, p. 260.

bate, is laid upon this bounty, leads me to go further. From an examination of the Acts of Congress by which the Land States were admitted into the Union it appears that a large portion of these reservations and grants was made on the express condition that the lands sold by the United States, under the jurisdiction of the States, *should remain exempt from any State tax for the space of five years after the sale.* This condition is particularly applicable to the appropriations for common schools, universities, seats of government, and salines, amounting to 12,105,093 acres. It is also particularly applicable to another item, not mentioned before, which is known as the five per cent fund, from the proceeds of the public lands, for the benefit of roads and canals, amounting in the whole to $5,242,069. These appropriations, being made on specific conditions, faithfully performed by the States down to this day, are properly excluded from our calculations. And this is an answer to the Senator from Kentucky [Mr. UNDERWOOD], who dwelt so energetically on these appropriations, without seeming to be aware of the conditions on which they were granted.

That I may make this more intelligible, let me refer to the act for the admission of Indiana. After setting forth the five reservations and grants already mentioned, it proceeds: —

"*And provided always*, That the five foregoing provisions herein offered are on the conditions that the convention of the said State shall provide by an ordinance, irrevocable without the consent of the United States, that every and each tract of land sold by the United States, from and after the first day of December next, shall be and remain exempt from any tax laid by order or under any authority of the

State, whether for State, county, or township, or any other purpose whatever, for the term of five years from and after the day of sale."

This clause does not stand by itself in the acts admitting the more recent States, but is mixed with other conditions. I will not believe, however, that any discrimination can be made between particular Land States, on the ground of difference in conditions properly attributable to accidental circumstances. The provision just quoted is found substantially in the acts for the admission of Ohio, Missouri, Illinois, Alabama, Mississippi, and Arkansas. So far as these States are concerned, it is a complete consideration, in the nature of satisfaction, for reservations and grants enjoyed by them. It also helps to illustrate the value of the *permanent immunity* from taxation belonging to the United States, by exhibiting concessions made by the United States to assure this franchise for certain moderate quantities of land during the brief space of five years only.

After the constant charges of squandering the public lands and of partiality to the Land States, I think all will be astonished at the small amount on the debtor side, in the great account between the States and the Nation. This consists of grants for internal improvements, in the whole reaching to only 8,474,473 acres, which, at $1.25 an acre, will be $10,593,091. If this sum be deducted from the estimated value of the immunity already enjoyed by the United States, we shall still have *upwards of* $60,000,000 *surrendered by the Land States to the nation;* or, if we call the annual tax two cents an acre, more than double this sum.

In these estimates I group together all the Land States. But, taking separate States, we find the same

proportionate result. For instance, there is Ohio, with 16,770,984 acres proclaimed for sale down to January 1, 1849. Adopting the basis already employed, and assuming that these lands continued in the possession of the United States an average period of twenty-five years after being surveyed and proclaimed, and that the land tax was one cent an acre, we have $4,192,746 as the value of the immunity from taxation already enjoyed by the United States in Ohio. From this may be deducted the value of 1,181,134 acres, being grants to this State for internal improvements, at $1.25 per acre, equal to $1,476,417, leaving upwards of two millions — nearly three millions — of dollars yielded by this State to the nation.

Take another State, — Missouri. It appears that down to January, 1849, 39,635,609 acres had been proclaimed for sale in this State. Assuming again the basis already employed, we have $9,908,902 as the value of the immunity from taxation already enjoyed by the United States in Missouri. From this may be deducted the value of 500,000 acres, granted for internal improvements, which, at $1.25 an acre, amounts to $625,000, leaving upwards of nine millions of dollars thus yielded by this State to the nation.

In this way I might proceed with all the Land States individually; but enough is done to repel the charges against them, and to elucidate a *peculiar equity.* On the one side, they have received little, very little, from the nation, — while, on the other side, the nation, by strong considerations of equity, is largely indebted to them. This obligation of itself constitutes an equitable fund, to which the Land States may properly resort for assistance in works of internal improvement; and

Congress will show an indifference to reasonable demands, should it fail to deal with them munificently, — in some sort, according to the simple measure of advantage which the nation has already so largely enjoyed at their hands.

Against these clear and well-supported merits, the old States present small claims to consideration. They have waived no right of taxation over lands within their acknowledged jurisdiction; they have made no valuable concession; they have yielded up no costly franchise. It remains, then, that, with candor and justice, they should recognize the superior — I will not say exclusive — claims of the States within whose borders and under the protection of whose laws the national domain is found.

Thus much for what I have to say in favor of this bill, on the ground of *justice* to the States in which the lands lie. If this argument did not seem sufficiently conclusive to render any further discussion superfluous, at least from me, I might go forward, and show that the true interests of the whole country — of every State in the Union, as of Iowa itself — are happily coincident with this claim of justice.

The State of Iowa, though distant and still sparsely settled, is known to contain the materials of boundless prosperity. The northern part may wear some of the rigid features of New England, but the middle and southern portion has a surface of great fertility, and in its bosom coal to an incalculable amount, — more, it is supposed, than all to be found in England and the whole European Continent. With these remarkable capacities, which, however, it shares with Illinois and Indiana and

with the northern part of Missouri, it will be able to subsist a large population and to support manufactories on the most extensive scale. Its fields will naturally wave with golden harvests, while its inexhaustible stores of coal will quicken every form of human industry, and will furnish an incalculable motive-power to all its multiplying machinery and workshops. If in the reports of Science, now authenticated by a careful and admirable geological survey of this region,[1] we may read the future development, I had almost said the destiny, of States, according to natural laws, which I believe, then it would be difficult to exaggerate what we may expect from Iowa.

But all resources will be vain and valueless without human intelligence, skill, and exertion. These will change the face of the country, opening forests, ploughing fields, working mines, building roads, establishing schools, planting churches, administering justice. To carry such blessings into every part of this new region is now an especial duty. Of course all who have property in this State, particularly all landholders, according to their means, must contribute to the improvements and institutions by which its welfare is advanced. This general principle seems to be clear. It is only when we come to its application that there can be any question.

It will be observed that here is no suggestion of legal right on the part of the Land States, or of legal obligation on the part of the nation. Nor is there any sug-

[1] Report of a Geological Survey of Wisconsin, Iowa, and Minnesota, and incidentally of a Portion of Nebraska Territory, made under Instructions from the United States Treasury Department, by David Dale Owen, United States Geologist. Philadelphia, 1852.

gestion that our fathers, when by formal compact they placed this immunity beyond question, failed to act justly; nor again is there any suggestion that this immunity should be repealed. It is simply assumed as an existing fact, which has been of value to the nation, and therefore constitutes an equitable ground of obligation on the part of the nation in favor of the Land States. Lord Bacon defines equity as the "general conscience of the realm"; and it is to this "general conscience" of the republic that the parties interested in this obligation must look for its recognition.

And now the question is directly presented, whether the Great Landholder, persevering in this system, will leave to the small landholders by his side the further labor of building railroads, by which his own magnificent domain will be largely enhanced, without contribution thereto. The very statement of the question seems to be sufficient. Reason declares, with unhesitating voice, that, whatever may be the legal immunities of the Great Landholder, he cannot, in equity, be above his neighbors, and that he should contribute to these works in some proportion according to the extent of the benefit and the immunities enjoyed. To ascertain this proportion precisely may be difficult; but the obligation is clear and obvious.

It is on the ground of this obligation that the bill now before the Senate is most strongly commended. It is said, I know, that by the grant of alternate sections for the purpose of railroads the remaining sections are so far enhanced in value that the nation loses nothing by the grant, — so that it may enjoy the rare privilege of bestowing without losing, of squandering, if you please, without any diminution of its means. Though this

consideration is not unimportant, yet I do not dwell upon it, because it is so entirely subordinate to that derived from the positive obligation of the Great Landholder on unanswerable grounds of justice. I say confidently on unanswerable grounds of justice, because nothing can render the rules of justice in such a case less obligatory upon the Government than upon a private individual. If the latter, according to all the laws of good neighborhood, would be bound to help such a work, then is the Government bound. To decline this duty, to shirk this obvious obligation, is to behave as no private citizen could behave without the imputation of meanness. Thus strongly may I put the case, without fear of contradiction.

The influence of roads and canals in enhancing the value of the public domain through which they pass is well illustrated by experience. Take the Illinois and Michigan Canal, for which alternate sections of land were granted by the United States. Many years ago, as I understand, all the reserved sections on this line were sold, while in other districts of Illinois, where there has been no similar improvement, large quantities of land still continue unsold. Indeed, of the whole national domain in Illinois, amounting to upwards of thirty-five millions of acres, only fifteen millions had been sold in January, 1849.[1]

Take another instance. The Chicago and Rock Island Railroad — of which one of the proposed roads in Iowa will be an extension — has given an impulse to sales throughout a wide region. The County of Henry, through which it passes, is one of the largest and least populous in Illinois. In this county the lands had

[1] Exec. Doc., 30th Cong. 2d Sess., H. R. No. 12, Table 6, p. 255.

been in the market for nearly thirty years, and recent sales had not reached a thousand acres a year. But in the very year after this road was surveyed fifty thousand acres of public land were sold in this county, being more than all the land sold in the remainder of the district. Again, I am told, that, after the bill now pending passed the Senate, at the last Congress, public attention, in anticipation of the promised improvement, was attracted to the neighborhood of Davenport, the eastern terminus of the proposed road, and the public domain, not only at this place, but in the adjoining counties, at once found a market. Though the sales had already been considerable, they were in a single year more than doubled, amounting to upwards of eighty thousand acres.

It will readily occur to all that the whole country must gain by the increased value of the lands still retained and benefited by the proposed road. But this advantage, though not unimportant, is trivial by the side of the grander gains, commercial, political, social, and moral, which must accrue from the opening of a new communication, by which the territory beyond the Mississippi is brought into connection with the Atlantic seaboard, and the distant post of Council Bluffs becomes a suburb of Washington. It would be difficult to exaggerate the influence of roads as means of civilization. This, at least, may be said: Where roads are not, civilization cannot be; and civilization advances as roads are extended. By roads religion and knowledge are diffused,—intercourse of all kinds is promoted,—producer, manufacturer, and consumer are all brought nearer together,—commerce is quickened,—markets are created, —property, wherever touched by these lines, as by a

magic rod, is changed into new values, — and the great current of travel, like that stream of classic fable, or one of the rivers in our own California, hurries in a channel of golden sand. The roads, together with the laws, of ancient Rome are now better remembered than her victories. The Flaminian and Appian Ways, once trod by such great destinies, still remain as beneficent representatives of ancient grandeur. Under God, the road and the schoolmaster are two chief agents of human improvement. The education begun by the schoolmaster is expanded, liberalized, and completed by intercourse with the world; and this intercourse finds new opportunities and inducements in every road that is built.

Our country has already been active in this work. Through a remarkable line of steam communications, chiefly by railroad, its whole population is now, or will be shortly, brought close to the borders of Iowa. Cities of the Southern seaboard, Charleston, Savannah, and Mobile, are already stretching their lines in this direction, soon to be completed conductors, — while the traveller from all the principal points of the Northern seaboard, from Portland, Boston, Providence, New York, Philadelphia, Baltimore, and Washington, now passes without impediment to this remote region, traversing a territory of unexampled resources, at once magazine and granary, the largest coal-field and at the same time the largest corn-field of the known globe, winding his way among churches and school-houses, among forests and gardens, by villages, towns, and cities, along the sea, along rivers and lakes, with a speed which may recall the gallop of the ghostly horseman in the ballad: —

"Fled past on right and left how fast
Each forest, grove, and bower!
On right and left fled past how fast
Each city, town, and tower!

"Tramp! tramp! along the land they rode,
Splash! splash! along the sea."

On the banks of the Mississippi he is now arrested. The proposed road in Iowa will bear the adventurer yet further, to the banks of the Missouri; and this remote giant stream, mightiest of the earth, leaping from its sources in the Rocky Mountains, will be clasped with the Atlantic in the same iron bracelet. In all this I see not only further opportunities for commerce, but a new extension to civilization and increased strength to our National Union.

A heathen poet, while picturing the Golden Age, perversely indicates the absence of long roads as creditable to that imaginary period in contrast with his own. "How well," exclaims the youthful Tibullus, "they lived while Saturn ruled, — *before the earth was opened by long ways!*"

"Quam bene Saturno vivebant rege, priusquam
Tellus *in longas est patefacta vias!*" [1]

But the true Golden Age is before, not behind; and one of its tokens will be the opening of those *long ways*, by which villages, towns, counties, states, provinces, nations, are all to be associated and knit together in a fellowship that can never be broken.

[1] Eleg. Lib. I. iii. 35, 36.

SECOND SPEECH.

THE debate on the Iowa Railroad Bill was continued on successive days down to February 17th, when the speech of Mr. Sumner was particularly assailed by Mr. Hunter, of Virginia. To this he replied at once.

ONE word, if you please, Mr. President. The Senator from Virginia [Mr. HUNTER], who has just taken his seat, has very kindly given me notice that I am to expect "a broadside" from the Senator from Kentucky [Mr. UNDERWOOD]. For this information I am properly grateful. When, a few days ago, I undertook to discuss an important question in this body, I expressed certain views, deemed by me of weight. Those views I submitted to the candor and judgment of the Senate. I felt confidence in their essential justice, and nothing heard since has impaired that confidence. I have listened with respect and attention to the address of the Senator from Virginia, as it becomes me to listen to everything any Senator undertakes to put forth here. But I hope to be excused, if I say, that, in all he has so eloquently uttered with reference to myself, he has not touched by a hair-breadth my argument. He has criticized — I am unwilling to say that he has cavilled at — my calculations; but he has not, by the ninth part of a hair, touched the conclusion which I drew. That still stands. And let me say that it cannot be successfully assailed in the way attempted by him.

I said that injustice is done to the Land States, out of this body and in this body: out of this body, because I often hear them called "land-stealers" and "land pirates"; in this body by the Senator from Virginia,

when he complains of the partial distribution of the public lands, and particularly points out the bill now before the Senate as an instance. I said that this charge was without foundation. Why? On what ground? Because there is an existing equity (I so called it, — nothing more) on the part of the Land States as against the General Government. And on what is this founded? On a fact of record in the public acts of this country, — that is, the exemption of the public domain from taxation by the States in which it is situated. The Senator from Virginia does not question this fact; of course he cannot, for it is embodied in Acts of Congress.

The next inquiry, then, was, as to the value of this immunity, which I called an equity. To illustrate this value, I went into calculations and estimates, which I presented, after some study of the subject, — not, perhaps, such study as the Senator from Virginia has found time to give, or such as the Senator from Kentucky, in the plenitude of his researches, doubtless has given. On those calculations and estimates I attributed a certain value to the equity in question. My calculations and estimates may be overstated; they may be exaggerated. The Senator from Virginia thinks them so. Other gentlemen with whom I have had the privilege of conversing think them understated. However this may be, it does not touch the argument. I may have done injustice to my argument by overstating them. I intended to understate them. From all that I hear, I still think that I have understated them. But, whether understated or overstated, the argument still stands, that these States have conceded to the General Government an immunity from taxation, — that this

immunity has a certain value, I think very large, — and that this value constitutes an equity to which the Land States have a right to appeal for bountiful, ay, for munificent treatment. Has the Senator from Virginia answered this argument? Can he answer it?

I forbear to go into the subject at this time. I rose simply to state, that, as the Senator from Virginia generously warns me that I am to expect "a broadside" from the Senator from Kentucky, I am to regard what he said to-day, so far as I am concerned, simply as a signal gun. The Senator will pardon me, if I say it is nothing more; for it has not reached me, or my argument. Meanwhile I await, with resignation, and without anxiety, the "broadside" from Kentucky.

THIRD SPEECH.

THE debate was continued for many days, during which the speech of Mr. Sumner was attacked and defended. Finally, on the 16th of March, immediately before the question was taken, he again returned to the subject.

MR. PRESIDENT, — Much time has been consumed by this question. At several periods the debate has seemed about to stop, and then again it has taken a new spring, while the goal constantly receded. I know not if it is now near the end. But I hope that I shall not seem to interfere with its natural course, or unduly occupy the time of the Senate, if I venture again for one moment to take part in it.

The argument which I submitted on a former occasion has not passed unregarded. And since it can owe little to my individual position, I accept the opposition it encounters as a tribute to its intrinsic importance. It has been assailed by different Senators, on different days, and in different ways. It has been met by harmless pleasantry, and by equally harmless vituperation, — by figures of arithmetic and figures of rhetoric, — by minute criticism and extended discussion, — also, by that sure resource of a weak cause, hard words, and an imputation of personal motives. I propose no reply to all this array; least of all shall I retort hard words, or repel personal imputations. On this head I content myself with saying, — and confidently, too, — that, had he known me better, the Senator from Kentucky [Mr. UNDERWOOD], who is usually so moderate and careful, would have hesitated long before uttering expressions which fell from him in this debate.

The position I took is regarded as natural, or excusable, in a Senator from one of the Land States, acting under the vulgar spur of local interest; but it is pronounced unnatural and inexcusable in a Senator from Massachusetts. Now, Sir, it is sufficient for me to say, in reply to this imputation, that, while I know there are influences and biases incident to particular States or sections of the Union, I recognize no difference in the duties of Senators on this floor. Coming from different States and opposite sections, we are all Senators of the Union; and our constant duty is, without fear or favor, to introduce into the national legislation the principle of justice. In this spirit, while sustaining the bill before the Senate, I spoke for justice to the Land States.

In my present course, I but follow the example of Senators and Representatives of Massachusetts on kindred measures from their earliest introduction down to the present time. The first instance was in 1823, on the grant to the State of Ohio of land one hundred and twenty feet wide, with one mile on each side, for the construction of a road from the lower rapids of the Miami River to the western boundary of the Connecticut Reserve. On the final passage of this grant in the House, the Massachusetts delegation voted as follows: Yeas, — Samuel C. Allen, Henry W. Dwight, Timothy Fuller, Jeremiah Nelson, John Reed, Jonathan Russell; Nay, — Benjamin Gorham. In the Senate the bill passed without a division. In 1828 a still greater unanimity occurred on the passage of the bill to aid the State of Ohio in extending the Miami Canal from Dayton to Lake Erie; and this bill is an early instance of the grant of alternate sections, as in that now before the Senate. On this the Massachusetts delegation in the House voted as follows: Yeas, — Isaac C. Bates, Benjamin W. Crowninshield, John Davis, Edward Everett, John Locke, John Reed, Joseph Richardson, John Varnum; Nays, — none. In the Senate, Messrs. Silsbee and Webster both voted in the affirmative. I pass over intermediate grants, which, I am told, were sustained by the Massachusetts delegations with substantial unanimity. The extensive grants, by the last Congress, to Illinois, Mississippi, and Alabama, in aid of a railroad from Chicago to Mobile, were sustained by all the Massachusetts votes in the House, except one.

Still further, in sustaining the present bill on grounds of justice to the Land States, I but follow the recorded instructions of the Legislature of Massachusetts, ad-

dressed to its Senators and Representatives here on a former occasion. The subject was presented in a special message to the Legislature in 1841, by the distinguished Governor at that time,[1] who strongly urged "a liberal policy towards the actual settler, and *towards the new States*, for this is justly due to both." And he added: "Such States are entitled to a more liberal share of the proceeds of the public lands than the old States, as we owe to their enterprise much of the value this property has acquired. *It seems to me, therefore, that justice towards the States in which these lands lie demands a liberal and generous policy towards them.*"[2] In accordance with this recommendation, it was resolved by the Legislature, "That, in the disposition of the public lands, *this Commonwealth approves of making liberal provisions in favor of the new States;* and that she ever has been, and still is, ready to cooperate with other portions of the Union in securing to those States such provisions."[3] Thus a generous policy towards the Land States, with liberal provisions in their favor, was considered by Massachusetts the part of justice.

It was my purpose, before this debate closed, to consider again the argument I formerly submitted, and to vindicate its accuracy in all respects, both in principle and in detail. But this has already been so amply done by others much abler than myself, — by the Senator from Missouri [Mr. GEYER], both the Senators from Michigan [Mr. FELCH and Mr. CASS], the Senator from Arkansas [Mr. BORLAND], the Senator from Iowa [Mr.

[1] Hon. John Davis.
[2] Mass. House Documents, 1841, No. 23, pp. 2, 3.
[3] Mass. Acts and Resolves, 1841, p. 422.

DODGE], and the Senator from Louisiana [Mr. DOWNS], — all of whom, with different degrees of fulness, have urged the same grounds in favor of this bill, that I feel unwilling at this hour, and while the Senate actually waits to vote on the question, to occupy time by further dwelling upon it. Perhaps on some other occasion I may think proper to return to it.

But, while avoiding what seems superfluous discussion, I cannot forbear asking your attention to the amendment of the Senator from Kentucky [Mr. UNDERWOOD].

This amendment, when addressed to Senators of the favored States, is of a most plausible character. It proposes to give portions of the public domain to the original Thirteen, together with Vermont, Maine, Tennessee, and Kentucky, for purposes of education and internal improvement, at the rate of one acre to each inhabitant according to the recent census. This is commended by the declared objects, — education and internal improvement. Still further, in its discrimination of the old States, it assumes a guise well calculated to tempt them into its support. It holds out the attraction of seeming, though unsubstantial, self-interest. It offers a lure, a bait, to be unjust. I object to it on several grounds.

1. But I put in the fore-front, as my chief objection, its clear, indubitable, and radical injustice, written on its very face. The amendment confines its donations to the old States, and, so doing, makes an inequitable discrimination in their favor. It tacitly assumes, that, by the bill in question, or in some other way, the Land States have received their proper distributive portion, so as to lose all title to share with the old States in the pro-

posed distribution. But, if there be any force in the argument, so much considered in this debate, that these railroad grants actually enhance the value of the neighboring lands of the United States, and constitute a proper mode of bringing them into the market, or if there be any force in the other argument which I have presented, drawn from the equitable claims of the Land States, in comparison with the other States, to the bounty of the *great untaxed proprietor*,[1] then this assumption is unfounded. There is no basis for the discrimination made by the amendment. If the Iowa Land Bill be proper without this amendment, as most will admit, then this amendment, introducing a new discrimination, is improper. Nor do I well see how any one prepared to sustain the original bill can sustain the amendment. The Senator from Kentucky, who leads us to expect his vote for the bill, seems to confess the injustice of his attempted addition.

2. I object to it as out of place. The amendment engrafts upon a special railroad grant to a single State a novel distribution of the national domain. Now there is a place and a time for all things; and nothing seems to me more important in legislation than to keep all things in their proper place, and to treat them at their proper time. The distribution of the public lands is worthy of attention; and I am ready to meet this great question whenever it arises legitimately for our consideration; but I object to considering it merely as a rider to the Iowa Land Bill.

[1] Mr. Webster, in his greatest speech, the celebrated reply to Mr. Hayne, touched on this consideration. He said: "And, finally, have not these new States singularly strong claims, founded on the ground already stated, that the Government is a great untaxed proprietor in the ownership of the soil?" — *Speeches*, Vol. III. p. 291.

The amendment would be less objectionable, if proposed as a rider to a general system of railroad grants, — as, for instance, to a bill embracing grants to all the Land States; but it is specially objectionable as a graft upon the present bill. The Senator who introduced it doubtless assumed that other bills, already introduced, would pass; but, if his amendment be founded on this assumption, it should wait the action of Congress on all these bills.

3. If adopted, the amendment might endanger, if it did not defeat, the Iowa Land Bill. This seems certain. Having this measure at heart, believing it founded in essential justice, I am unwilling to place it in this jeopardy.

4. It prepares the way for States of this Union to become landholders in other States, subject, of course, to the legislation of those States, — an expedient which, though not strictly objectionable on grounds of law, or under the Constitution, is not agreeable to our national policy. It should not be promoted without strong and special reasons. In the bill introduced by the Senator from Illinois [Mr. SHIELDS], bestowing lands for the benefit of the insane in different States, this objection is partially obviated by providing that the States in which there are no public lands shall select their portion in the Territories of the United States, and not in other States. But, since in a short time these very Territories may become States, this objection is rather adjourned than removed.

5. Lands held under this amendment, though in the hands of States, will be liable to taxation, as lands of other non-resident proprietors, and on this account will be comparatively valueless. For this reason I said that

the amendment held out the attraction of seeming, though unsubstantial, self-interest. That the lands will be liable to taxation cannot be doubted. The amendment does not propose in any way to relieve them from this burden, nor am I aware that they can be relieved from it. The existing immunity is only so long as they belong to the United States. Now there is reason to believe, that, from lack of agencies and other means familiar to the United States, the lands distributed by this amendment would not find as prompt a market as those still in the hands of the Great Landholder. But however this may be, it is entirely clear, from the recorded experience of the national domain, that these lands, if sold at the minimum price of the public lands, and only as rapidly as those of the United States, and if meanwhile they are subject to the same burdens as the lands of other non-residents, will, before the sales are closed, be eaten up by the taxes. The taxes will amount to more than the entire receipts from sales; and thus the grant, while unjust to the Land States, will be worthless to the old States, the pretended beneficiaries. In the Roman Law, an insolvent inheritance was known by an expressive phrase as *damnosa hæreditas.* A grant under this amendment would be *damnosa donatio.*

For such good and sufficient reasons, I am opposed to this amendment.

J. FENIMORE COOPER, THE NOVELIST.

LETTER TO THE REV. RUFUS W. GRISWOLD, FEBRUARY 22, 1852.

WASHINGTON, February 22, 1852.

MY DEAR SIR, — It is not in my power to be present at the proposed demonstration in memory of the late Mr. Cooper. But I am glad of the opportunity, afforded by the invitation with which I have been honored, to express my regard for his name and my joy that he lived and wrote.

As an author of clear and manly prose, as a portrayer to the life of scenes on land and sea, as a master of the keys to human feelings, and as a beneficent contributor to the general fund of happiness, he is remembered with delight.

As a patriot who loved his country, who illustrated its history, who advanced its character abroad, and by his genius won for it the unwilling regard of foreign nations, he deserves a place in the hearts of the American people.

I have seen his works in cities of France, Italy, and Germany. In all these countries he was read and admired. Thus by his pen American intervention was peacefully, inoffensively, and triumphantly carried into the heart of the European Continent.

In honoring him we exalt literature and the thrice

blessed arts of peace. Our country will learn anew from your demonstration that there are glories other than those of state or war.

I have the honor to be, dear Sir,

Your obedient servant,

CHARLES SUMNER.

REV. RUFUS W. GRISWOLD.

CHEAP OCEAN POSTAGE.

Speech in the Senate, on a Resolution in Relation to Cheap Ocean Postage, March 8, 1852.

This proposition Mr. Sumner constantly renewed at subsequent sessions of Congress.

MR. PRESIDENT, — I submit the following resolution. As it is one of inquiry, I ask that it may be considered at this time.

Resolved, That the Committee on Naval Affairs, while considering the nature and extent of aid proper to be granted to the Ocean Steamers, be directed to inquire whether the present charges for letters carried by these steamers are not unnecessarily large and burdensome to foreign correspondence, and whether something may not be done, and, if so, what, to secure the great boon of Cheap Ocean Postage.

There being no objection, the question was stated to be on the adoption of the resolution.

Mr. President, — The Committee on Naval Affairs have the responsibility of shaping some measure by which the relations of our Government with the ocean steamers will be defined. And since one special inducement to these relations, involving the bounty now enjoyed and further solicited, is the carrying of the mails, I trust this Committee will be willing to inquire whether

there cannot be a reduction on the postage of foreign correspondence. Under the Postage Act of 1851, the Postmaster, by and with the advice of the President, has power to reduce, from time to time, the rates of postage on all mailable matter conveyed between the United States and any foreign country. But the existence of this power in the Postmaster will not render it improper for the Committee, now drawn into connection with this question, to take it into careful consideration, with a view to some practical action, or, at least, recommendation. The subject is of peculiar interest; nor do I know any measure, so easily accomplished, which promises to be so beneficent as cheap ocean postage. The argument in its favor is at once brief and unanswerable.

A letter can be sent three thousand miles in the United States for three cents, and the reasons for cheap postage on land are equally applicable to ocean.

In point of fact, the conveyance of letters can be effected in sailing or steam packets at less cost than by railway.

Besides, cheap ocean postage will tend to supersede the clandestine or illicit conveyance of letters, and to bring into the mails all mailable matter, which, under the present system, is carried in the pockets of passengers or in the bales and boxes of merchants.

All new facilities for correspondence naturally give new expansion to human intercourse; and there is reason to believe, that, through an increased number of letters, cheap ocean postage will be self-supporting.

Cheap postal communication with foreign countries will be of incalculable importance to the commerce of the United States.

By promoting the intercourse of families and friends separated by ocean, cheap postage will add to the sum of human happiness.

The present high rates of ocean postage — namely, twenty-four cents on half an ounce, forty-eight cents on an ounce, and ninety-six cents on a letter which weighs a fraction more than an ounce — are a severe tax upon all, particularly upon the poor, amounting, in many cases, to a complete prohibition of foreign correspondence. This should not be.

It particularly becomes our country, by the removal of all unnecessary burdens upon foreign correspondence, to advance the comfort of European emigrants seeking a home among us, and to destroy, as far as practicable, every barrier to free intercourse between the Old World and the New.

And, lastly, cheap ocean postage will be a bond of peace among the nations of the earth, and will extend good-will among men.

By such reasons this measure is commended. Much as I rejoice in the American steamers, which vindicate a peaceful supremacy of the seas, and help to weave a golden tissue between the two hemispheres, I cannot consider these, with all their unquestionable advantages, an equivalent for cheap ocean postage. I trust that they are not inconsistent with each other, and that both may flourish together.

Objection was made to the resolution, as not being addressed to the proper Committee, and a brief debate ensued, in which Mr. Rusk, Mr. Gwin, Mr. Badger, Mr. Davis, Mr. Seward, Mr. Mason, and Mr. Sumner took part. It was urged by the last, in reply, that the Committee on Naval Affairs was the proper Committee, as at the present moment it is specially charged with a subject intimately connected with the inquiry

proposed. At the suggestion of Mr. Badger the matter was allowed to lie over till the next day.

On Tuesday, March 9th, the Senate proceeded to consider the resolution submitted by Mr. Sumner on the 8th, relative to Ocean Steamers and Cheap Ocean Postage. On motion of Mr. Sumner, it was amended, and finally adopted, without opposition, as follows : —

"*Resolved*, That the Committee on the Post Office and Post Roads be directed to inquire whether the present charges on letters carried by the Ocean Steamers are not unnecessarily large and burdensome to foreign correspondence, and whether something may not be done, and, if so, what, to secure the great boon of Cheap Ocean Postage."

THE PARDONING POWER OF THE PRESIDENT.

OPINION SUBMITTED TO THE PRESIDENT, MAY 14, 1852, ON THE APPLICATION FOR THE PARDON OF DRAYTON AND SAYRES, INCARCERATED AT WASHINGTON FOR HELPING THE ESCAPE OF SLAVES.

THIS case, from beginning to end, is a curious episode of Antislavery history. The people of Washington were surprised, on the morning of April 16, 1848, at hearing that the "Pearl," a schooner from the North, had sailed down the Potomac with seventy-six slaves, who had hurried aboard in the vain hope of obtaining their freedom. The schooner was pursued and brought back to Washington with her human cargo, and the liberators, Drayton, master, and Sayres, mate. As the latter were taken from the river-side to the jail, they were followed by a proslavery mob, estimated at from four to six thousand people, many armed with deadly weapons, amid wrathful cries of, "Hang him!" "Lynch him!" with all profanities and abominations of speech, and exposed to violence of all kinds, — the thrust of a dirk-knife coming within an inch of Drayton. The same mob besieged the jail, and, hearing that Hon. Joshua R. Giddings, the brave Representative of Ohio, was there in consultation with the prisoners, demanded his immediate expulsion, and the jailer, to save bloodshed, insisted upon his departure. Nor was the prevailing rage confined to the jail. It extended to the office of the "National Era," the Antislavery paper, which was saved from destruction only through the courage and calmness of its admirable editor. The spirit of the mob entered both Houses of Congress, and the slave-masters raged, as was their wont.

Meanwhile Drayton and Sayres were indicted before the Criminal Court of the District of Columbia for "transporting" slaves. There were no less than one hundred and fifteen indictments against each of the prisoners, and the bail demanded of each was seventy-six thousand dollars. Hon. Horace Mann, a Representative of Massachusetts, appeared for the defence. His speech on this occasion will be read with constant interest.[1] The spirit of the mob without entered the court-

[1] Slavery: Letters and Speeches by Horace Mann, pp. 84–118.

room, betraying itself even in the conduct of the judge, while standing near the devoted counsel for the defence were men who cocked pistols and drew dirks in the mob that followed the prisoners to the jail. Of course the verdict was "Guilty," and the sentence was according to the extreme requirement of a barbarous law.

Drayton and Sayres lingered in prison more than four years, and during this long incarceration they were the objects of much sympathy at the North. A petition to Congress in their behalf, signed by leading Abolitionists, including the eloquent Wendell Phillips, was forwarded to Mr. Sumner for presentation to the Senate. On careful consideration, he was satisfied that such a petition, if presented, would excite the dominant power to insist more strongly than ever on the letter of the law, and he took the responsibility of withholding it. Meanwhile he visited the sufferers in prison, and appealed to President Fillmore for their pardon. In this application he was aided by that humane lady, Miss Dix. The President interposed doubts of his right to pardon in such a case, but expressed a desire for light on this point. At his invitation, Mr. Sumner laid before him the following paper, which was referred to the Attorney-General, Mr. Crittenden, who gave an opinion affirming the power of the President, — adding, however, "Whether the power shall be exercised in this instance is another and very different question."[1] This opinion bears date August 4, 1852, which, it will be observed, was some time after the Presidential Conventions of the two great political parties. Shortly afterwards the pardon was granted.

There was reason to believe that an attempt would be made to arrest the pardoned persons on warrants from the Governor of Virginia. Anticipating this peril, Mr. Sumner, as soon as the pardon was signed, hurried to the jail in a carriage, and, taking them with him, put them in charge of a friend, who conveyed them that night to Baltimore, a distance of forty miles, where they arrived in season for the early morning trains North, and in a few hours were out of danger.

BY the laws of Maryland, 1737, chapter 2, section 4, it is provided that any person "who shall steal any negro or other slave, or who shall counsel, hire, aid, abet, or command any person or persons" to do so, "shall suffer death as a felon." The punishment has since been changed to imprisonment, for a term not less than seven nor more than twenty years.

[1] Opinions of Attorneys-General, Vol. V. pp. 580–591.

Fourteen years later, by the act of 1751, chapter 14, section 10, it was provided, that, "if any free person shall entice and persuade any slave within this province to run away, and who shall actually run away, from the master, owner, or overseer, and be convicted thereof, by confession, or verdict of a jury upon an indictment or information, shall forfeit and pay the full value of such slave to the master or owner of such slave, to be levied by execution on the goods, chattels, lands, or tenements of the offender, and, in case of inability to pay the same, shall suffer one year's imprisonment without bail or mainprise."

Still later, by the act of 1796, chapter 67, section 19, "the transporting of any slave or any person held to service" from the State was made a distinct offence, for which the offender was liable in an action of damages, and also by indictment.

By the Act of Congress organizing the District of Columbia (February 27, 1801) it was declared, that "the laws of the State of Maryland, as they now exist, shall be and continue in force in that part of the said District which was ceded by that State to the United States, and by them accepted as aforesaid." Under this provision, these ancient laws of Maryland are to this day of full force in the District of Columbia.

The facts to be considered are few. Messrs. Drayton and Sayres, on indictment and trial, under the act of 1737, for stealing slaves, were acquitted, the jury rendering a verdict of "Not guilty." Resort was then had to the statute of 1796, chapter 67, section 19, as follows.

"And be it enacted, That any person or persons, who shall hereafter be convicted of giving a pass to any slave, or per-

son held to service, or shall be found to assist, by advice, donation, or loan, or otherwise, the transporting of any slave, or any person held to service, from this State, or by any other unlawful means depriving a master or owner of the service of his slave, or person held to service, for every such offence the party aggrieved shall recover damages in an action on the case against such offender or offenders; and such offender or offenders also shall be liable, upon indictment, and conviction upon verdict, confession, or otherwise, in this State, in any county court where such offence shall happen, [to] be fined a sum not exceeding two hundred dollars, at the discretion of the court, one half to the use of the master or owner of such slave, the other half to the county school, in case there be any; if no such school, to the use of the county."

Under this statute, proceedings were instituted by the Attorney of the District of Columbia against these parties, in seventy-four different indictments, each indictment being founded on the alleged "transporting" of a single slave. On conviction, Drayton was sentenced on each indictment to a fine of $140 and costs, in each case $19.49, amounting in the sum-total to $11,802.26. On conviction, Sayres was sentenced on each indictment to a fine of $100 and costs, in each case $17.38, amounting in the sum-total to $8,686.12. One half of the fine was, according to law, to the use of the masters or owners of the slaves transported; the other half, to the county school, — or, in case there were no such school, to the use of the county. Afterwards, on motion of the Attorney for the District, they were "prayed in commitment," and committed until the fine and costs should be paid. In pursuance of this sentence, and on this motion, they have been detained in prison, in the City of

Washington, since April, 1848, and are still in prison, unable from poverty to pay these large fines. The question now occurs as to the power of the President to pardon them, *so at least as to relieve them from imprisonment.*

The peculiar embarrassment in this case arises from the nature of the sentence. If it were simply a sentence of imprisonment, the power of the President would be unquestionable. So, also, if it were a sentence of imprisonment, with fine superadded, payable to the United States, his power would be unquestionable; and the same power would extend to the case of a fine payable to the United States, with imprisonment as the alternative on non-payment of the fine.

But in the present case imprisonment is the alternative for non-payment of fines which are not payable to the United States, but to other parties, namely, the slave-owners and the county. It is important, however, to bear in mind that these fines are a mere donation to these parties, and not a compensation for services rendered. These parties are not informers, nor were the proceedings in the nature of a *qui tam* action.

It should be distinctly understood, at the outset, that the proceedings against Drayton and Sayres were not at the suit of any informer or private individual, but at the prosecution of the United States by indictment. They are therefore removed from the authority of the English cases, which protect the share of an informer after judgment from remission by pardon from the crown.

The power of the President in the present case may be regarded, *first*, in the light of the Common Law, —

secondly, under the statutes of Maryland, — and, *thirdly*, under the Constitution of the United States.

First. As to the *Common Law*, it may be doubtful, whether, according to early authorities, the pardoning power can be used so as to bar or divest any legal interest, benefit, or advantage vested in a private individual. It is broadly stated by English writers that it cannot be so used. (2 Hawkins, P. C., 392, Book II., chap. 37, sec. 34; 17 Viner's Abridgment, 39, Prerogative of the King, U. art. 7.) But this principle does not seem to be sustained by practical cases in the United States, except in the instances of informers and *qui tam* actions, while, on one occasion, in a leading case of Kentucky, it was rejected. (*Routt* v. *Feemster*, 7 J. J. Marshall, 132.)

But it is clearly established, that, where the fine is allotted to a public body, or a public officer, for a public purpose, it may be remitted by pardon. This may be illustrated by several cases.

1. As where, in Pennsylvania, the fine was for the benefit of the county. In this case the Court said: "Until the money is collected and paid into the treasury, the constitutional right of the Governor to pardon the offender, and remit the fine or forfeiture, remains in full force. They can have no more vested interest in the money than the Commonwealth, under the same circumstances, would have had; and it cannot be doubted, that, until the money reaches the treasury, the Governor has the power to remit. . . . . In the case of costs, private persons are interested in them; but as to fines and forfeitures, they are imposed upon principles of public policy. The latter, therefore, are under the exclusive control of the Governor." (*Commonwealth* v. *Denniston*,

9 Watts, 142.) The same point is also illustrated by a case in Illinois. (*Holliday* v. *The People*, 5 Gilman, 214 – 217.)

2. As where, in Georgia, the fine was to be paid to an inferior court for county purposes. (*In Re* Flournoy, Attorney-General, 1 Kelly, 606 – 610.)

3. As where, in South Carolina, the fine was to be paid to the Commissioners of Public Buildings, for public purposes, (*The State* v. *Simpson*, 1 Bailey, 378,) or the Commissioners of the Roads. (*The State* v. *Williams*, 1 Nott & McCord, 26. See also *Rowe* v. *The State*, 2 Bay, 565.)

According to these authorities, the portion of the fine allotted to the county, or to the school, may be remitted. Of this there can be no doubt.

Secondly. *The Statutes of Maryland*, anterior to the organization of the District of Columbia, may also be regarded as an independent source of light on this question, since these statutes are made the law of the District. And here the conclusion seems to be easy.

By the Constitution of Maryland, adopted November 8th, 1776, it is declared: "The Governor may grant reprieves or pardons for any crime, except in such cases where the law shall otherwise direct." Notwithstanding these strong words of grant, which seem to be as broad as the Common Law, it was further, as if to remove all doubt, declared by the Legislature, in 1782 (Chap. 42, sec. 3): "That the Governor, with the advice of the Council, be authorized *to remit the whole or any part of any fine*, penalty, or forfeiture, heretofore imposed, or hereafter to be imposed, in any court of law." Here is no exception or limitation of any kind. By express

words, the Governor is authorized to remit the whole or any part of any fine. Of course, under this clause he cannot remit a private debt; but he may remit *any fine.* The question is not, whether the fine be payable to the United States or other parties, but whether it is *a fine.* If it be a fine, it is in the power of the Governor.

This view is strengthened by the circumstance, that in Maryland, according to several statutes, fines are allotted to parties other than the Government. The very statute of 1796, under which these proceedings were had, was passed subsequently to this provision respecting the remission of fines. It must be interpreted in harmony with the earlier statute; and since all these statutes are now the law of the District of Columbia, the power of the President, under these laws, to remit these fines, seems established without special reference to the Common Law or to the Constitution of the United States.

If this were not the case, two different hardships would ensue: first, the statute of 1782 would be despoiled of its natural efficacy; and, secondly, the minor offence of "transporting" a single slave would be punishable, on non-payment of the fine, with imprisonment for life, while the higher offence of "stealing" a slave is punishable with imprisonment for a specific term, and the other offence of "enticing" a slave is punishable with a fine larger than that for transporting a slave, and, on non-payment thereof, imprisonment for one year only.

Thirdly. Look at the case under the *Constitution of the United States.*

By the Constitution, the President has power "to grant reprieves and pardons for offences against the

United States, except in cases of impeachment." According to a familiar rule of interpretation, the single specified exception leaves the power of the President applicable to all other cases: *Expressio unius exclusio est alterius.* Mr. Berrien, in one of his opinions as Attorney-General, recognizes "the pardoning power as coextensive with the power to punish"; and he quotes with approbation the words of another writer, that "the power is general and unqualified," and that "the remission of fines, penalties, and forfeitures, under the revenue laws, is included in it." (Opinions of the Attorneys-General, Vol. I. p. 756.)

On this power Mr. Justice Story thus remarks: "The power of remission of fines, penalties, and forfeitures is also included in it, and may, in the last resort, be exercised by the Executive, although it is in many cases by our laws confided to the Treasury Department. No law can abridge the constitutional powers of the Executive Department, or interrupt its right to interpose by pardon in such cases. — Instances of the exercise of this power by the President, in remitting fines and penalties, in cases not within the scope of the laws giving authority to the Treasury Department, have repeatedly occurred, and their obligatory force has never been questioned." (Story, Com. on Constitution, Vol. II. § 1504.)

It has been decided by the Supreme Court, after elaborate argument, that "the Secretary of the Treasury has authority, under the Remission Act of the 3d of March, 1797, chap. 361, to remit a forfeiture or penalty accruing under the revenue laws, at any time, before or after a final sentence of condemnation or judgment for the penalty, until the money is actually paid over to the Collector for distribution"; and that "such remission

extends to the shares of the forfeiture or penalty to which the officers of the customs are entitled, as well as to the interest of the United States." In giving his opinion on this occasion, Mr. Justice Johnson, of South Carolina, made use of language much in point. "Mercy and justice," he said, "could only have been administered by halves, if collectors could have hurried causes to judgment, and then clung to the one half of the forfeiture, in contempt of the cries of distress or the mandates of the Secretary." (*United States* v. *Morris*, 10 Wheaton, 303.)

A case has occurred in Kentucky, to which reference has been already made, in which it is confidently and broadly assumed that the pardoning power under the Constitution extends even to the penalties due to informers. The following passage occurs in the opinion of the Court. "The act of 1823 says that any prosecuting attorney, who shall prosecute any person to conviction under it, shall be entitled to twenty-five per cent of the amount of such fine as shall be collected. . . . . The act gives the prosecuting attorney one fourth of the money, when collected, but vests him with no interest in the fine or sentence, separate and distinct from that of the Commonwealth, that would screen his share from the effect of any legal operation which should, before collection, abrogate the whole or a part of it. It would require language of the strongest and most explicit character to authorize a presumption that the Legislature intended to confer any such right. We could never presume an intention to control the Governor's constitutional power to remit fines and forfeitures. *If he can in this way be restrained in the exercise of his power to remit for the fourth of a fine, so can he be for*

the half or the whole. This part of his prerogative cannot be curtailed. With the exception of the case of treason, his power to remit fines and forfeitures, grant reprieves and pardons, is unlimited, illimitable, and uncontrollable. It has no bounds but his own discretion. It is no doubt politic and proper for the Legislature to incite prosecuting attorneys and informers, by giving them a portion of fines, when collected; but in so doing the citizen cannot be debarred of his right of appeal to executive clemency." (*Routt* v. *Feemster*, 7 J. J. Marshall, 132.)

According to these authorities, it seems reasonable to infer, that, under the Constitution of the United States, the pardoning power, which is clearly applicable to the offence of "transporting" slaves of the District, might remit the penalties in question. These penalties, though allotted to the owners and the county, when finally collected, are neither more nor less than the punishment, under sentence of a criminal court, for an offence of which the parties stand convicted upon indictment. They can be collected and acquitted only by the United States. No process for this purpose is at the command of the slave-owner. He had no control whatever over the prosecution at any stage, nor did it proceed at his suggestion or information. The very statute under which these public proceedings were instituted in the name of the United States secured to the slave-owner his private action on the case for damages, — thus separating the public from the private interests. These it seems the duty of the President to keep separate, except on the final collection and distribution of the penalties. Public policy and the ends of justice require that the punishment for a criminal offence should, in every case, be exclusively subject to the supreme pardoning power,

without dependence upon the will of any private person. An obvious case will illustrate this. Suppose, in the case of Drayton and Sayres, it should be ascertained beyond doubt that the conviction was procured by perjury. If, by virtue of the judgment, the slave-owners have an interest in the imprisonment of these men which cannot be touched, then the prisoners, unable to meet these heavy liabilities, must continue in perpetual imprisonment, or owe their release to the accident of private good-will. The President, notwithstanding his beneficent power to pardon, under the Constitution, will be powerless to remedy this evil. But such a state of things would be monstrous; and any interpretation of the Constitution is monstrous which thus ties his hands. Mercy and justice would be rendered not merely *by halves*, but, owing to the inability of prisoners, from poverty, to pay the other half of the fine, they would be entirely arrested.

The power of pardon, which is attached by the Constitution to offences generally, should not be curtailed. It is a generous prerogative, and should be exercised generously. *Boni judicis est ampliare jurisdictionem.* This is an old maxim of the law. But if it be the duty of a good judge to extend his jurisdiction, how much more is it the duty of a good President to extend the field of his clemency! At least, no small doubt should deter him from the exercise of his prerogative.

The conclusion from this review is as follows.

1. By the English Common Law the costs and one half of the fines may be remitted. It is not certain that by this law, as adopted in the United States, the other half of the fines may not also be remitted.

2. Under the statutes of Maryland, now the law of the District, the Governor, and, of course, the President, may remit "the whole or any part of any fine," without exception.

3. Under the Constitution of the United States, and according to its true spirit, the pardoning power of the President is coextensive with the power to punish, except in the solitary case of impeachment.

Several courses are open to the President in the present case.

I. By a *general pardon* he may discharge Drayton and Sayres *from prison, and remit all the fines and costs for which they are detained.* Such a pardon would unquestionably operate effectually upon the imprisonment and upon the costs, and also upon the half of the fines due to the county. It would be for the courts, on a proper application, and in the exercise of their just powers, to restrict it, if the pardon did not operate upon the other moiety.

Among the opinions of the Attorney-General is a case which illustrates this point. In 1824 Joshua Wingate prayed for a credit, in the settlement of his accounts, for his proportion of a fine incurred by one Phineas Varney. It appeared that suit was instituted by the petitioner as Collector of the District of Bath, Maine, on which judgment was obtained in May, 1809 the defendant was arrested and committed to jail, under execution on that judgment, and the fine was afterwards remitted by the President. The petitioner contended that the President had no constitutional or legal power to remit his proportion of the fine, the right to which had vested by the institution of the suit. On this Mr.

Wirt remarks, that "it is unnecessary to express an opinion upon the correctness of this position, because, if it be correct, the act of remission by the President being wholly inoperative as to that portion of the fine claimed by the collector, his legal right to recover it remained in full force, notwithstanding the remission; and it is his own fault, if he has not enforced his right at law." (Opinions of the Attorneys-General, Vol. I. p. 479.)

A general pardon cannot conclude the question so as to divest any existing rights. It can do no wrong. Why should the President hesitate to exercise it?

II. By a *limited pardon* the President may discharge Drayton and Sayres simply and exclusively *from their imprisonment, without touching their pecuniary liability,* but leaving them still exposed to proceedings for all fines and costs, to be satisfied out of any property they may hereafter acquire.

If the imprisonment were a specific part of the sentence, — as, if they had been sentenced to one year's imprisonment and a fine of one hundred dollars, — beyond all question they might be discharged, by pardon, from this imprisonment. But where the imprisonment, as in the present case, is not a specific part of the sentence, but simply an alternative in the nature of a remedy, to secure the payment of the fine, the power of the President cannot be less than in the former case.

So far as all private parties are concerned, the imprisonment is a mere matter of *remedy,* which can be discharged without divesting the beneficiaries of any rights; and since imprisonment for debt has been abolished, it is reasonable, under the circumstances, that this peculiar remedy should be discharged.

III. By another form of *limited pardon,* the President may discharge Drayton and Sayres *from their imprisonment, also from all fines and costs in which the United States have an interest,* without touching the rights of other parties.

This would set them at liberty, but would leave them exposed to private proceedings at the instigation of the owners of the "transported" slaves, if any should be so disposed.

IV. By still another form of pardon, reference may be made to the Maryland statute of 1782, under which the Governor is authorized "to remit the whole or any part of any fine," without any exception therefrom; and this power, now vested in the President, may be made the express ground for the remission of all fines and costs due from Drayton and Sayres. By this form of pardon the case may be limited, as a precedent hereafter, to a very narrow circle of cases. It would not in any way affect cases arising under the general laws of the Union.

In either of these alternatives the great object of this application would be gained, — the discharge of these men from prison.

CHARLES SUMNER.

May 14, 1852.

PRESENTATION OF A MEMORIAL AGAINST THE FUGITIVE SLAVE BILL.

REMARKS IN THE SENATE, MAY 26, 1852.

IN THE SENATE, Wednesday, 26th May, 1852, on the presentation of a Memorial against the Fugitive Slave Bill, the following passage occurred, which illustrates the sensitiveness of the Senate with regard to Slavery and the impediments to its discussion. Mr. Sumner said: —

MR. PRESIDENT, — I hold in my hand, and desire to present, a memorial from the representatives of the Society of Friends in New England, formally adopted at a public meeting, and authenticated by their clerk, in which they ask for the repeal of the Fugitive Slave Bill. After setting forth their sentiments on the general subject of Slavery, the memorialists proceed as follows.

"We, therefore, respectfully, but earnestly and sincerely, entreat you to repeal the law of the last Congress respecting fugitive slaves: first and principally, because of its injustice towards a long sorely oppressed and deeply injured people; and, secondly, in order that we, together with other conscientious sufferers, may be exempted from the penalties which it imposes on all who, in faithfulness to their Divine Master, and in discharge of their obligations to their distressed fellow-men, feel bound to regulate their conduct, even under the heaviest penalties which man can inflict for so doing, by the divine injunction, 'All things whatsoever ye

would that men should do to you, do ye even so to them,' and by the other commandment, 'Thou shalt love the Lord thy God with all thy heart, and thy neighbor as thyself.'"

Mr. President, — This memorial is commended by the character of the religious association from which it proceeds, — men who mingle rarely in public affairs, but with austere virtue seek to carry the Christian rule into life.

The President [Mr. King, of Alabama]. The Chair will have to interpose. The Senator is not privileged to enter into a discussion of the subject now. The contents of the memorial, simply, are to be stated, and then it becomes a question whether it is to be received, if any objection is made to its reception. Silence gives consent. After it is received, he can make a motion with regard to its reference, and then make any remarks he thinks proper.

Mr. Sumner. I have but few words to add, and then I propose to move the reference of the memorial to the Committee on the Judiciary.

The President. The memorial has first to be received, before any motion as to its reference can be entertained. The Senator presenting a memorial states distinctly its objects and contents; then it is sent to the Chair, if a reference of it is desired. But it is not in order to enter into a discussion of the merits of the memorial until it has been received.[1]

Mr. Sumner. I do not propose to enter into any such discussion. I have already read one part of the memorial, and it was my design merely to refer to the character of the memorialists, — a usage which I have observed on this floor constantly, — and to state the course I should pursue, concluding with a motion for a reference.

[1] On any subject but Slavery there was no check upon Senators at any time.

THE PRESIDENT. The Chair will hear the Senator, if such is the pleasure of the Senate, if he does not go into an elaborate discussion.

MR. SUMNER. I have no such purpose.

MR. DAWSON [of Georgia]. Let him be heard.

SEVERAL SENATORS. Certainly.

MR. SUMNER. I observed that this memorial was commended by the character of the religious association from which it proceeds. It is commended also by its earnest and persuasive tone, and by the prayer which it presents. Offering it now, Sir, I desire simply to say, that I shall deem it my duty, on some proper occasion hereafter, to express myself at length on the matter to which it relates. Thus far, during this session, I have forborne. With the exception of an able speech from my colleague [Mr. DAVIS], the discussion of this all-absorbing question has been mainly left with Senators from another quarter of the country, by whose mutual differences it is complicated, and between whom I do not care to interfere. But there is a time for all things. Justice also requires that both sides should be heard; and I trust not to expect too much, when, at some fit moment, I bespeak the clear and candid attention of the Senate, while I undertake to set forth, frankly and fully, and with entire respect for this body, convictions deeply cherished in my own State, though disregarded here, to which I am bound by every sentiment of the heart, by every fibre of my being, by all my devotion to country, by my love of God and man. Upon these I do not enter now. Suffice it, for the present, to say, that, when I undertake that service, I believe I shall utter nothing which, in any just sense, can be called *sectional*, unless the Constitution is sectional, and unless

the sentiments of the Fathers were sectional. It is my happiness to believe, and my hope to be able to show, that, according to the true spirit of the Constitution, and according to the sentiments of the Fathers, FREEDOM, and not *Slavery*, is NATIONAL, while SLAVERY, and not *Freedom*, is SECTIONAL.

In duty to the petitioners, and with the hope of promoting their prayer, I move the reference of their petition to the Committee on the Judiciary.

A brief debate ensued, in which Messrs. Mangum, of North Carolina, Badger, of North Carolina, Hale, of New Hampshire, Clemens, of Alabama, Dawson, of Georgia, Adams, of Mississippi, Butler, of South Carolina, and Chase, of Ohio, took part; and, on motion of Mr. Badger, the memorial was laid on the table.

THE NATIONAL FLAG THE EMBLEM OF UNION FOR FREEDOM.

LETTER TO THE BOSTON COMMITTEE FOR THE CELEBRATION OF THE 4TH OF JULY, 1852.

WASHINGTON, July 2, 1852.

DEAR SIR, — It will not be in my power to unite with my fellow-citizens of Boston in celebrating the approaching anniversary of our national independence. I venture, however, in response to the invitation with which I have been honored, to recall an incident not unworthy of remembrance, especially in our local history.

The thirteen stripes which now distinguish our national flag were first unfurled by Washington, when in command of the American forces which surrounded Boston, after the Battle of Bunker Hill, and before the Declaration of Independence. Thus early was this emblem of Union consecrated to Freedom. Our great chief at once gave to the new ensign a name which may speak to us still. In a letter, written at the time, he calls it the Union Flag, and declares why it was first displayed. His language is, that he had "*hoisted the* UNION FLAG *in compliment to the* UNITED *Colonies.*"[1] Afterwards, on the 14th of June, 1777, by a resolution of the Continental

[1] Letter to Joseph Reed, Jan. 4, 1776: Writings, ed. Sparks, Vol. III. p. 225.

Congress, the stars and stripes were formally adopted as the flag of the *United States.*

This piece of history suggests a sentiment which I beg leave to offer.

Our National Flag. First hoisted before Boston, as the emblem of Union for the sake of Freedom. Wherever it floats, may it never fail to inspire the sentiments in which it had its origin!

I have the honor to be, dear Sir,
Your faithful servant,
CHARLES SUMNER.

Hon. BENJAMIN SEAVER, Chairman of the Committee, &c., &c.

UNION AGAINST THE SECTIONALISM OF SLAVERY.

LETTER TO A FREE-SOIL CONVENTION AT WORCESTER, JULY 6, 1852.

THIS Convention was organized with the following officers: Hon. Stephen C. Phillips, of Salem, President, — William Davis, of Plymouth, Gershom B. Weston, of Duxbury, Edward L. Keyes, of Dedham, William B. Spooner, of Boston, John G. Palfrey, of Cambridge, John B. Alley, of Lynn, Samuel E. Sewall, of Stoneham, John W. Graves, of Lowell, John Milton Earle, of Worcester, William Jackson, of Newton, Rodolphus B. Hubbard, of Sunderland, Caleb Swan, of Easton, Joel Hayden, of Williamsburg, William M. Walker, of Pittsfield, Vice-Presidents, — Robert Carter, of Cambridge, George F. Hoar, of Worcester, S. B. Howe, of Lowell, Andrew J. Aiken, of North Adams, S. L. Gere, of Northampton, Secretaries.

The resolutions were reported by Hon. Henry Wilson.

WASHINGTON CITY, July 3, 1852.

DEAR SIR, — The true and well-tried friends of Freedom in Massachusetts are about to assemble at Worcester. It will not be in my power to be with them, to catch the contagion of their enthusiasm, to be strengthened by their determination, and to learn anew from eloquent lips the grandeur of our cause and the exigency of our duties. But I confidently look to them for trumpet words which shall again rally the country against the *sectionalism* of Slavery.

At Worcester, in 1848, commenced the first strong movement, which, gaining new force at Buffalo, and sweeping the Free States, enrolled three hundred thou-

sand electors in constitutional opposition to a hateful wrong. The occasion now requires a similar effort. Both the old parties, with apostasy greater than that which aroused our condemnation at that time, have trampled on the Declaration of Independence, and the most cherished sentiments of the Fathers of the Republic. Even liberty of speech is threatened. It is difficult to see how any person, loyal to Freedom, and desirous of guarding it by all constitutional means, can support the national candidates of either of these parties, without surrendering the cause he professes to have at heart. Let no man expect from me any such surrender.

The two Conventions at Baltimore, by their recorded resolutions, have vied with each other in servility to Slavery. But I rejoice to believe that in both parties there are large numbers of good men who will scorn these professions. The respectable persistence in opposition to the Black Flag, which distinguished at least one of the Conventions, furnishes an earnest for the future, though Massachusetts can derive small encouragement from her delegates there. All her votes in that Convention were cast in favor of those declarations by which Slavery has received new safeguards and Freedom new restrictions.

But these efforts are doomed to disappointment. In spite of the clamors of partisans and the assumptions of the Slave Power, there is one principle which must soon prevail. It cannot be too often declared; for it is an all-sufficient basis for our political position, and an answer also to the cry of "Sectionalism," by which the prejudices of the country are ignorantly and illogically directed against us. According to the true

spirit of the Constitution and the sentiments of the Fathers, *Freedom*, and not Slavery, is *national*, while *Slavery*, and not Freedom, is *sectional*. Though this proposition commends itself at once, and is sustained by the history of the Constitution, yet both the great parties, under the influence of the Slave Power, have reversed the true application of its terms. A *National* Whig is simply a Slavery Whig, and a *National* Democrat is simply a Slavery Democrat, in contradistinction to all who regard Slavery as a *sectional* institution, within the exclusive control of the States, and with which the Nation has nothing to do. In upholding Freedom everywhere under the *National* Government, we oppose a pernicious *sectionalism*, which falsely calls itself *national*. All this will yet be seen and acknowledged.

Amidst the difficulties and defections at the present moment, the Future is clear. Nothing can permanently obstruct Truth. But our duties increase with the occasion; nor will the generous soul be deterred by the greatness of the peril. Any such will be content to serve Freedom, to support her supporters, and to leave the result to Providence. Better be where Freedom is, though in a small minority or alone, than with Slavery, though surrounded by multitudes, whether Whigs or Democrats, contending merely for office and place.

Believe me, dear Sir, ever faithfully yours,

CHARLES SUMNER.

Hon. E. L. KEYES.

"STRIKE, BUT HEAR": ATTEMPT TO DISCUSS THE FUGITIVE SLAVE BILL.

Remarks in the Senate, on taking up the Resolution instructing the Committee on the Judiciary to report a Bill for Immediate Repeal of the Fugitive Slave Act, July 27 and 28, 1852.

MR. PRESIDENT, — I have a resolution which I desire to offer; and as it is not in order to debate it to-day, I give notice that I shall expect to call it up to-morrow, at an early moment in the morning hour, when I shall throw myself upon the indulgence of the Senate to be heard upon it.

The resolution was then read, as follows: —

"*Resolved*, That the Committee on the Judiciary be instructed to consider the expediency of reporting a bill for the immediate repeal of the Act of Congress, approved September 18, 1850, usually known as the Fugitive Slave Act."

In pursuance of this notice, on the next day, 28th July, during the morning hour, an attempt was made by Mr. Sumner to call it up, that he might present his views on Slavery.

Mr. President, — I now ask permission of the Senate to take up the resolution which I offered yesterday. For that purpose, I move that the prior orders be postponed, and upon this motion I desire to say a word. In asking the Senate to take up this resolution for consideration, I say nothing now of its merits, nor of

the arguments by which it may be maintained; nor do I at this stage anticipate any objection to it on these grounds. All this will properly belong to the discussion of the resolution itself, — the main question, — when it is actually before the Senate. The single question now is, not the resolution, but whether I shall be heard upon it.

As a Senator, under the responsibilities of my position, I have deemed it my duty to offer this resolution. I may seem to have postponed this duty to an inconvenient period of the session; but had I attempted it at an earlier day, I might have exposed myself to a charge of a different character. It might then have been said, that, a new-comer and inexperienced in this scene, without deliberation, hastily, rashly, recklessly, I pushed this question before the country. This is not the case now. I have taken time, and, in the exercise of my most careful discretion, at last ask the attention of the Senate. I shrink from any appeal founded on a trivial personal consideration; but should I be blamed for delay latterly, I may add, that, though in my seat daily, my bodily health for some time past, down to this very week, has not been equal to the service I have undertaken. I am not sure that it is now, but I desire to try.

And now again I say, the question is simply whether I shall be heard. In allowing me this privilege, — this right, I may say, — you do not commit yourselves in any way to the principle of the resolution; you merely follow the ordinary usage of the Senate, and yield to a brother Senator the opportunity which he craves, in the practical discharge of his duty, to express convictions dear to his heart, and dear to large numbers

of his constituents. For the sake of these constituents, for my own sake, I now desire to be heard. Make such disposition of my resolution afterward as to you shall seem best; visit upon me any degree of criticism, censure, or displeasure; but do not refuse me a hearing. "Strike, but hear."

A debate ensued, in which Messrs. Mason, of Virginia, Brooke, of Mississippi, Charlton, of Georgia, Gwin, of California, Pratt, of Maryland, Shields, of Illinois, Douglas, of Illinois, Butler, of South Carolina, Borland, of Arkansas, and Hunter, of Virginia, took part. Objections to taking up the resolution were pressed on the ground of "want of time," "the lateness of the session," and "danger to the Union."

The question being put upon the motion by Mr. Sumner to take up his resolution, it was rejected, — Yeas 10, Nays 32, — as follows.

YEAS, — Messrs. Clarke, Davis, Dodge, of Wisconsin, Foot, Hamlin, Seward, Shields, Sumner, Upham, and Wade: — 10.

NAYS, — Messrs. Borland, Brodhead, Brooke, Cass, Charlton, Clemens, De Saussure, Dodge, of Iowa, Douglas, Downs, Felch, Fish, Geyer, Gwin, Hunter, King, Mallory, Mangum, Mason, Meriwether, Miller, Morton, Norris, Pearce, Pratt, Rusk, Sebastian, Smith, Soulé, Spruance, Toucey, and Weller: — 32.

Mr. Sumner was thus deprived of an opportunity to present his views on this important subject, and it was openly asserted that he should not present them during the pending session. Such was the pro-slavery tyranny which prevailed. He was thus driven to watch for an opportunity, when, according to the rules of the Senate, he might be heard without impediment. On one of the last days of the session it came.

TRIBUTE TO ROBERT RANTOUL, Jr.

Speech in the Senate, on the Death of Hon. Robert Rantoul, Jr., August 9, 1852.

A message was received from the House of Representatives, by Mr. Hayes, its Chief Clerk, communicating to the Senate information of the death of the Hon. Robert Rantoul, Jr., a member of the House of Representatives from the State of Massachusetts, and the proceedings of the House thereon.

The resolutions of the House of Representatives were read. Mr. Sumner said: —

MR. PRESIDENT, — By formal message of the House of Representatives we learn that one of our associates in the public councils is dead. Only a few brief days — I had almost said hours — have passed since he was in his accustomed seat. Now he is gone from us forever. He was my colleague and friend; and yet, so sudden has been this change, that no tidings even of his illness came to me before I learned that he was already beyond the reach of mortal aid or consolation, and that the shadows of the grave were descending upon him. He died here in Washington, late on Saturday evening, 7th August; and his earthly remains, accompanied by the bereaved companion of his life, with a Committee of the other House, are now far on the way to Massachusetts, there to mingle, dust to dust, with his natal soil.

The occasion does not permit me to speak of Mr. Rantoul at length. A few words will suffice; nor will the language of eulogy be required.

He was born 13th August, 1805, at Beverly, in Essex County, Massachusetts, the home of Nathan Dane, final author of the immortal Ordinance by which Freedom was made a perpetual heirloom in the broad region of the Northwest. Here he commenced life under happy auspices of family and neighborhood. Here his excellent father, honored for public services, venerable also with years and flowing silver locks, yet lives to mourn a last surviving son. The sad fortune of Burke is renewed. He who should have been as posterity is to this father in the place of ancestor.

Mr. Rantoul entered the Massachusetts Legislature early, and there won his first fame. For many years he occupied a place on the Board of Education. He was also, for a time, Collector of Boston, and afterwards Attorney of the United States for Massachusetts. During a brief period he held a seat in this body. Finally, in 1851, by the choice of his native District, remarkable for intelligence and public spirit, he became a Representative in the other branch of the National Legislature. In all these spheres he performed acceptable service. And the future promised opportunities of a higher character, to which his abilities, industry, and fidelity would have responded amply. Massachusetts has many arrows in her well-stocked quiver, but few could she so ill spare at this moment as the one now irrevocably sped.

By original fitness, study, knowledge, and various experience, he was formed for public service. But he was no stranger to other pursuits. Devoted early to the

profession of the law, he followed it with assiduity and success. In the antiquities of our jurisprudence few were more learned. His arguments at the bar were thorough; nor was his intellectual promptness in all emergencies of a trial easily surpassed. Literature, neglected by many under pressure of professional life, was with him a constant pursuit. His taste for books was enduring. He was a student always. Amidst manifold labors, professional and public, he cherished the honorable aspiration of adding to the historical productions of his country. A work on the history of France, where this great nation should be portrayed by an American pen, occupied much of his thoughts. I know not if any part was ever matured for publication.

The practice of the law, while sharpening the intellect, is too apt to cramp the faculties within the narrow limits of form, and to restrain the genial currents of the soul. On him it had no such influence. He was a Reformer. In warfare with Evil he was enlisted early and openly as a soldier for life. As such, he did not hesitate to encounter opposition, to bear obloquy, and to brave enmity. His conscience, pure as goodness, sustained him in every trial, — even that sharpest of all, the desertion of friends. And yet, while earnest in his cause, his zeal was tempered beyond that of the common reformer. He knew well the difference between the *ideal* and the *actual*, and sought, by practical means, in harmony with existing public sentiment, to promote the interests he fondly cherished. He saw that reform does not prevail at once, in an hour, or in a day, but that it is the slow and certain result of constant labor, testimony, and faith. Determined and tranquil in his own convictions, he had the grace to respect the convictions

of others. Recognizing in the social and political system those essential elements of stability and progress, he discerned at once the offices of Conservative and Reformer. But he saw also that a blind conservatism was not less destructive than a blind reform. By mingled caution, moderation, and earnestness, he seemed often to blend two characters in one, and to be at the same time a *Reforming Conservative* and a *Conservative Reformer.*

I might speak of his devotion to public improvements of all kinds, particularly to the system of Railroads. Here he was on the popular side. There were other causes where his struggle was keener and more meritorious. At a moment when his services were much needed, he was the faithful supporter of Common Schools, the peculiar glory of New England. By word and example he sustained the cause of Temperance. Some of his most devoted labors, commencing in the Legislature of Massachusetts, were for the Abolition of Capital Punishment. Since that consummate jurist, Edward Livingston, no person has done so much, by reports, essays, letters, and speeches, to commend this reform. With its final triumph, in the progress of civilization, his name will be indissolubly connected. There is another cause that commanded his early sympathies and some of his latest best endeavors, to which, had life been spared, he would have given the splendid maturity of his powers. Posterity cannot forget this; but I am forbidden by the occasion to name it here. Sir, in the long line of portraits on the walls of the Ducal Palace at Venice, commemorating its Doges, a single panel, where a portrait should have been, is shrouded by a dark curtain. But this darkened blank, in that place, attracts the beholder

more than any picture. Let such a curtain fall to-day upon this theme.[1]

In becoming harmony with these noble causes was the purity of his private life. Here he was blameless. In manners he was modest, simple, and retiring. In conversation he was disposed to listen rather than to speak, though all were well pleased when he broke silence and in apt language declared his glowing thought. But in the public assembly, before the people, or in the legislative hall, he was bold and triumphant. As a debater he rarely met his peer. Fluent, earnest, rapid, sharp, incisive, his words came forth like a flashing scymitar. Few could stand against him. He always understood his subject, and then, clear, logical, and determined, seeing his point before him, pressed forward with unrelenting power. His speeches on formal occasions were enriched by study, and contain passages of beauty. But he was most truly at home in dealing with practical questions arising from the actual exigencies of life.

Few had studied public affairs more minutely or intelligently. As a constant and effective member of the Democratic party, he became conspicuous by championship of its doctrines on the Currency and Free Trade. These he often discussed, and from the amplitude of his knowledge, and his overflowing familiarity with facts, statistics, and the principles of political economy, poured upon them a luminous flood. There was no topic within the wide range of national concern which did not occupy his thoughts. The resources and needs of the

[1] Slavery could not bear to be pointed at, and this slight allusion, which seemed due to the memory of Mr. Rantoul, caused irritation at the time. Hon. John Davis, the other Senator from Massachusetts, assigned as a reason for silence on the occasion, that he observed the ill-feeling of certain persons, and thought it best that the vote should be taken at once.

West were all known to him, and Western interests were like his own. As the pioneer, resting from his daily labors, learns the death of RANTOUL, he will feel a personal grief. The fishermen on the distant Eastern coast, many of whom are dwellers in his District, will sympathize with the pioneer. These hardy children of the sea, returning in their small craft from late adventures, and hearing the sad tidings, will feel that they too have lost a friend. And well they may. During his last fitful hours of life, while reason still struggled against disease, he was anxious for their welfare. The speech which he had hoped soon to make in their behalf was then chasing through his mind. Finally, in broken utterances, he gave to them his latest earthly thoughts.

The death of such a man, so sudden, in mid-career, is well calculated to arrest attention and to furnish admonition. From the love of family, the attachment of friends, and the regard of fellow-citizens, he has been removed. Leaving behind the cares of life, the concerns of state, and the wretched strifes of party, he has ascended to those mansions where there is no strife or concern or care. At last he stands face to face in His presence whose service is perfect freedom. He has gone before. You and I, Sir, and all of us, must follow soon. God grant that we may go with equal consciousness of duty done!

I beg leave to offer the following resolutions.

Resolved, unanimously, That the Senate mourns the death of Hon. ROBERT RANTOUL, JR., late a member of the House of Representatives from Massachusetts, and tenders to his relatives a sincere sympathy in this afflicting bereavement.

Resolved, As a remark of respect to the memory of the deceased, that the Senate do now adjourn.

The resolutions were adopted, and the Senate adjourned.

NOTE. — A monument of Italian marble was erected to the memory of Mr. Rantoul in the burial-ground at Beverly. It is an upright, four-sided shaft, on the front face of which is the following inscription, written by Mr. Sumner.

Here lies the body of
ROBERT RANTOUL, JR.,
Who was born at Beverly, 13th August, 1805,
and died at Washington, 7th August, 1852.
An upright lawyer, a liberal statesman, a good citizen,
studious of the Past, yet mindful of the Future.
Throughout an active life he strove for the
improvement of his fellow-men.
The faithful friend of Education, he upheld our Public Schools.
A lover of Virtue, he opposed Intemperance
by word and example.
In the name of Justice and Humanity, he labored
to abolish the punishment of Death.
Inspired by Freedom, he gave his professional services
to a slave hunted down by public clamor,
and bore his testimony, in Court and Congress,
against the cruel enactment which sanctioned the outrage.
He held many places of official trust and honor,
but the Good Works filling his days were above these.
Stranger! at least in something imitate him.

AUTHORSHIP OF THE ORDINANCE OF FREEDOM IN THE NORTHWEST TERRITORY.

LETTER TO HON. EDWARD COLES, AUGUST 23, 1852.

MR. COLES has been private secretary to Mr. Jefferson, and then to Mr. Madison, and afterwards Governor of Illinois. The following extract of a letter from him to Mr. Sumner, dated Schooley's Mountain, New Jersey, August 18, 1852, raises the question of the authorship of the Ordinance of Freedom.

"Not having the pleasure of a personal acquaintance with you, I shall ask the favor of Senator Cooper to present you this, and to make me known to you, and thus explain the obligation you have placed me under, as the friend of Mr. Jefferson, to correct an error you lately made in the Senate, by which you take from him, and give to another, one of the noblest and most consistent acts of his life.

"In your speech in the Senate, on the occasion of the death of Mr. Rantoul, you spoke of Nathan Dane as the "*Author*" of the Ordinance for the government of the Territory northwest of the Ohio. With my recollection, — for I have no book or person to refer to at this summer retreat, — I could not have been more surprised, if you had designated as the author of the Declaration of Independence one of the members who added his name to it after it had been adopted by Congress."

SENATE CHAMBER, August 23, 1852.

DEAR SIR, — I have been honored by your letter of August 18th, in which you kindly criticise an allusion by me in the Senate to Nathan Dane, as the author of the Ordinance of 1787. You award this high honor to Mr. Jefferson.

Believe me, I would not take from this great patriot one of his many titles to regard. Among these, I cannot forget the early, though unsuccessful effort, to which you refer, for the prohibition of Slavery in the Territo-

ries of the United States. But, while according to him just homage on this account, I cannot forget the crowning labors of another.

I submit to you, as beyond question, that the Ordinance of 1787, as finally adopted, was from the pen of Nathan Dane. In his great work on American Law, published in 1824, while Mr. Jefferson was yet alive, I find the following claim of authorship: "This ordinance (*formed by the author of this work*) was framed mainly from the laws of Massachusetts." [1]

In the celebrated debate of 1830, on Foot's Resolution, Mr. Webster, in his first speech, referred to the Ordinance as "drawn by Nathan Dane." [2] Afterwards, in his remarkable reply to Mr. Hayne, he vindicated at length this claim of authorship. While admitting the earlier efforts for the prohibition of Slavery in the Territories, he says: "It is no derogation from the credit, whatever that may be, of drawing the Ordinance, that its principles had before been prepared and discussed in the form of resolutions. If one should reason in that way, what would become of the distinguished honor of the author of the Declaration of Independence? There is not a sentiment in that paper which had not been voted and resolved in the Assemblies, and other popular bodies in the country, over and over again." [3]

Such, as it seems to me, is the true state of the question. To Jefferson belongs the honor of the first effort to prohibit Slavery in the Territories: to Dane belongs the honor of finally embodying this Prohibition in the Ordinance drawn by his hand in 1787.

[1] Abridgment and Digest of American Law, Vol. VII. ch. 223, art. 1, § 3.
[2] Works, Vol. III. p. 263.
[3] Ibid., p. 283.

As this question has already been presented to the Senate in a classical debate memorable in the history of the country, it seems to me hardly advisable, at this late stage of the session, to undertake its revival. If you should continue to think that I have made an error, I shall be happy to correct it in any practicable way.

Allow me to express my sincere respect for your character, with which from childhood I have been familiar, and my gratitude for the steadfast support you have ever given to the principles of Freedom advocated by Jefferson.

I remain, dear Sir, faithfully yours,

CHARLES SUMNER.

HON. EDWARD COLES.

NOTE.

THE history of the efforts for the exclusion of Slavery from the Northwest Territory is thus related by Mr. Webster, in the speeches above referred to.

"An attempt has been made to transfer from the North to the South the honor of this exclusion of Slavery from the Northwestern Territory. The Journal, without argument or comment, refutes such attempts. The cession by Virginia was made in March, 1784. On the 19th of April following, a committee, consisting of Messrs. Jefferson, Chase, and Howell, reported a plan for a temporary government of the Territory, in which was this article: 'That, after the year 1800, there shall be neither slavery nor involuntary servitude in any of the said States, otherwise than in punishment of crimes, whereof the party shall have been convicted.' Mr. Spaight, of North Carolina, moved to strike out this paragraph. The question was put, according to the form then practised, 'Shall these words stand as a part of the plan?' New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, and Pennsylvania, seven States, voted in the affirmative; Maryland, Virginia, and South Carolina, in the negative. North Carolina was divided. As the consent of nine States was necessary, the words could

not stand, and were struck out accordingly. Mr. Jefferson voted for the clause, but was overruled by his colleagues.

"In March of the next year (1785), Mr. King, of Massachusetts, seconded by Mr. Ellery, of Rhode Island, proposed the formerly rejected article, with this addition: 'And that this regulation shall be an article of compact, and remain a fundamental principle of the constitutions between the thirteen original States and each of the States described in the resolve.' On this clause, which provided the adequate and thorough security, the eight Northern States at that time voted affirmatively, and the four Southern States negatively.[1] The votes of nine States were not yet obtained, and thus the provision was again rejected by the Southern States. The perseverance of the North held out, and two years afterwards the object was attained," by the passage, on the 13th of July, 1787, with only one dissenting voice, of the "Ordinance for the Government of the Territory of the United States Northwest of the River Ohio."

"We are accustomed, Sir, to praise the lawgivers of Antiquity; we help to perpetuate the fame of Solon and Lycurgus; but I doubt whether one single law of any lawgiver, ancient or modern, has produced effects of more distinct, marked, and lasting character than the Ordinance of 1787. That instrument was drawn by Nathan Dane, then and now a citizen of Massachusetts. It was adopted, as I think I have understood, without the slightest alteration; and certainly it has happened to few men to be the authors of a political measure of more large and enduring consequence. It fixed forever the character of the population in the vast regions northwest of the Ohio, by excluding from them involuntary servitude. It impressed on the soil itself, while it was yet a wilderness, an incapacity to sustain any other than freemen. It laid the interdict against personal servitude in original compact, not only deeper than all local law, but deeper, also, than all local constitutions."

[1] More precisely, the seven Northern States, together with Maryland, affirmatively, — and four of the Southern States, namely, Virginia, North and South Carolina, and Georgia, negatively, — Delaware being unrepresented.

FREEDOM NATIONAL, SLAVERY SECTIONAL.

Speech in the Senate, on a Motion to repeal the Fugitive Slave Act, August 26, 1852.

Nihil autem gloriosius libertate præter virtutem, si tamen libertas recte a virtute sejungitur. — John of Salisbury.

If any man thinks that the interest of these Nations and the interest of Christianity are two separate and distinct things, I wish my soul may never enter into his secret. — Oliver Cromwell.

Mr. Madison thought it WRONG to admit in the Constitution the idea that there could be property in men. — *Debates in the Federal Convention*, August 25, 1787.

"O Slave, I have bought thee." "That is thy business," he replied. "Wilt thou run away?" "That is my business," said the slave.

Arabian Proverb.

Aliæ sunt leges Cæsarum, aliæ Christi: aliud Papinianus, aliud Paulus noster præcipit.

St. Jerome, *Epistola ad Oceanum de Morte Fabiolæ.*

If the marshal of the host bids us do anything, shall we do it, if it be against the great captain? Again, if the great captain bid us do anything, and the king or the emperor commandeth us to do another, dost thou doubt that we must obey the commandment of the king or emperor, and contemn the commandment of the great captain? Therefore, if the king or the emperor bid one thing, and God another, we must obey God, and contemn and not regard neither king nor emperor.

Henry VIII., *Glasse of Truth.*

Si *la peste* avoit des charges, des dignités, des honneurs, des bénéfices et des pensions à distribuer, elle auroit bientôt des théologiens et des jurisconsultes qui soutiendroient qu'elle est de droit divin, et que c'est un péché de s'opposer à ses ravages.

Abbé de Mably, *Droits et Devoirs du Citoyen*, Lettre II.

Cleanthes. What, to kill innocents, Sir? It cannot be.
It is no rule in justice there to punish.
Lawyer. Oh, Sir,
You understand a conscience, but not law.
Cleanthes. Why, Sir, is there so main a difference?
Lawyer. You 'll never be good lawyer, if you understand not that.
Cleanthes. I think, then, 't is the best to be a bad one.

Massinger, *The Old Law*, Act I. Sc. 1.

Among the assemblies of the great
A greater Ruler takes his seat;
The God of heaven as judge surveys
Those gods on earth and all their ways.

Why will ye, then, frame wicked laws?
Or why support the unrighteous cause?

Isaac Watts.

When Mr. Sumner entered the Senate, he found what were known as the Compromise Measures already adopted, among which was the odious Fugitive Slave Bill. These were maintained by the constant assumption that Slavery was a national institution, entitled to the protection of the Nation, while those who opposed them were denounced as Sectionalists. These words were made to play a great part. Both the old parties, Whig and Democrat, plumed themselves upon being *national*, and one of their hardest hits at a political opponent was to charge him with *sectionalism*. Mr. Sumner undertook, while showing the unconstitutionality and offensive character of the Fugitive Slave Bill, to turn these party words upon his opponents, insisting that Slavery was Sectional and Freedom National. The title of the speech embodies this fundamental idea, which was generally adopted by the opponents of Slavery.

In making this effort Mr. Sumner had against him both the old parties, fresh from their National Conventions. The Democrats had just nominated Franklin Pierce for the Presidency, and the Whigs General Scott; but the two parties concurred on the Slavery Question, and especially in support of the Fugitive Slave Bill, which was named in both platforms.

The Democrats, in their platform, declared as follows: —

"That the Democratic party will resist all attempts at renewing, in Congress or out of it, the agitation of the Slavery question, under whatever shape or color the attempt may be made."

The Whigs, in their platform, declared as follows: —

"That . . . . we will discountenance all efforts to continue or renew such agitation, whenever, wherever, or however the attempt may be made."

Here was nothing less than a joint gag, which would have been enforced against Mr. Sumner, as it had been a few weeks before, if he had not succeeded in planting himself on a motion clearly in order, which opened the whole question. Before speaking, he was approached by several, who asked him to give up his purpose, or at least, if he spoke, not to divide the Senate. To all he replied, that, God willing,

he should speak, and would press the question to a vote, if he were left alone. A curious parallel to this incident will be found in the Life of Sir Fowell Buxton, when this eminent Abolitionist was pressed not to bring forward in the House of Commons his motion against Slavery, and especially not to divide the House. Against the entreaties of friends, personal and political, he persevered; and this firmness of purpose was the beginning of that victory by which shortly afterwards British Emancipation was secured.[1]

From the statement in the *Globe* it appears that Mr. Sumner spoke for three hours and three quarters, when a debate ensued, in which the following Senators took part: Messrs. Clemens, of Alabama, Badger, of North Carolina, Dodge, of Iowa, Hale, of New Hampshire, Douglas, of Illinois, Weller, of California, Chase, of Ohio, Rusk, of Texas, Toucey, of Connecticut, Bradbury, of Maine, Hunter, of Virginia, James, of Rhode Island, Bright, of Indiana, Cooper, of Pennsylvania, Butler, of South Carolina, Brodhead, of Pennsylvania, Pratt, of Maryland, Mason, of Virginia, and Cass, of Michigan.

Mr. Clemens opened the debate with personal attack which is a specimen of the brutalities of Slavery; but there was no call to order. He was followed by Mr. Badger, who undertook a formal reply, but could not avoid the personalities which were so natural to speakers vindicating Slavery. He began by remarking: "I think I may say, without hazard or fear of contradiction, that the Senate of the United States never heard a more extraordinary speech than that which has just been delivered by the Senator from Massachusetts, — extraordinary in its character, and most extraordinary in the time and the occasion which the gentleman chose for its delivery. . . . . Three hours and three quarters has the gentleman occupied, at this late period of the session, with this discussion." After considering at some length the constitutionality of the Fugitive Slave Bill, especially in answer to Mr. Sumner, he proceeded to quote from the speech at Faneuil Hall (*ante*, Vol. II. pp. 398 – 424) denouncing the Fugitive Slave Bill, and then said, "I shudder, when I think of these expressions." Numerous quotations followed, and he charged upon the speech a pernicious influence on the public mind, stimulating to violence. After exposing the former speech, Mr. Badger proceeded to comment again upon that just made. "This speech, Mr. President, is well calculated to stir up the people of Massachusetts. They look to the honorable Senator for direction and guidance; they consider him a 'marvellous proper man,' and, availing himself of his influence over them, he delivers himself of such a tirade of

[1] Memoirs of Sir Thomas Fowell Buxton, by his Son, Ch. 18.

abuse upon the law of his own country — a law passed by this very Senate, in which he knows there are many gentlemen who voted for and still support that law — as is calculated, if any one lent a moment's credence to what he says, to cover us with scorn. . . . . Does he hope to accomplish anything, except to stir up sedition at home against this law, and make the streets of Boston again the scene of disgraceful riots and lawless violence by the lawless opposers of the Constitution and laws of the United States? Never, Sir, since I have been a member of this body, has the Senate witnessed such an exhibition." Then, with a sneer at Antislavery men as of "one idea," the Senator added, that, "admitting everything they say as to the desirableness of abolishing Slavery, it is utterly impracticable."

Mr. Dodge and Mr. Douglas insisted upon the obligations under the Constitution. So did Mr. Toucey, Mr. Bradbury, Mr. Bright, and others. Mr. Cass justified his original support of the Compromise measures by his fear for the Union, saying, "To speak in ordinary language, I was almost frightened to death. . . . . I would have voted for twenty Fugitive Slave Laws, if I had believed the safety of the Union depended upon my doing so"; and then he added: "Sir, the Fugitive Slave Law is now in force. It shall never be touched, or altered, or shaken, or repealed, by any vote of mine. That is the plain English of it."

Mr. Weller imitated Mr. Clemens and Mr. Badger in personalities. He began by a confession as follows. "I will say, Sir, at the outset, that this is the first time in the course of my life that I have listened to the whole of an Abolition speech. I did not know that it was possible that I could endure a speech for over three hours upon the subject of the Abolition of Slavery. But this oration of the Senator from Massachusetts to-day has been so handsomely embellished with poetry, both Latin and English, so full of classical allusions and rhetorical flourishes, as to make it much more palatable than I supposed it could have been made." He then proceeded to say, among other things, "If the constituents of the Senator from Massachusetts follow his direction, if they obey his counsels, murder, I repeat, is inevitable; and upon your hands, Sir, ay, upon your hands [addressing Mr. SUMNER], must rest the blood of those murdered men. . . . . This forcible resistance is not only calculated to strike at the very foundation of our republican institutions by dissolving the Union, but to bring upon the head of the learned Senator from Massachusetts the blood of murdered men. He who counsels murder is himself a murderer." Here Mr. Weller followed the lead of Mr. Badger in misrepresenting the speech just made. Mr. Sumner interrupted him to say,

"Not one word has fallen from my lips to-day, suggesting in any way a resort to force."

Mr. Sumner was not without defenders, and what they said belongs to this history. Early in the debate Mr. Hale expressed himself strongly.

"I feel that I should be doing injustice to my own feelings, and injustice to my friend, the Senator from Massachusetts, if I were to fail at this time to express the very great gratification with which I listened to his speech. In saying that, I do not mean to pass by entirely the honorable Senator from North Carolina [Mr. BADGER], for I listened to him, as I always do, with great pleasure; but justice compels me to say that by far the best part of his speech was the extract which he read from a former speech of the honorable Senator from Massachusetts. [*Laughter.*] I listened to them both with great pleasure; but, Sir, I feel bound to say to-day, that it is my deliberate conviction that the honorable Senator from Massachusetts, if he were actuated by as corrupt and selfish motives as can possibly be attributed to him, has, so far as his own personal fame and reputation are concerned, done enough by the effort he has made here to-day to place himself side by side with the first orators of antiquity, and as far ahead of any living American orator as Freedom is ahead of Slavery. I believe that he has formed to-day a new era in the history of the politics and of the eloquence of the country, and that in future generations the young men of this nation will be stimulated to effort by the record of what an American Senator has this day done, to which all the appeals drawn from ancient history would be entirely inadequate. Yes, Sir, he has to-day made a draft upon the gratitude of the friends of humanity and of liberty that will not be paid through many generations, and the memory of which shall endure as long as the English language is spoken, or the history of this Republic forms a part of the annals of the world. That, Sir, is what I believe; and if I had one other feeling, or could indulge in it, in reference to that effort, it would be a feeling of envy, that it was not in me to tread even at an humble distance in the path which he has so nobly and eloquently illustrated."

Mr. Chase adopted the argument of Mr. Sumner against the Fugitive Slave Bill, and vindicated him personally.

"The argument which my friend from Massachusetts has addressed to us to-day was not an assault upon the Constitution. It was a noble vindication of that great charter of government from the perversions of the advocates of the Fugitive Slave Act. . . . . What has the Senator from Massachusetts asserted? That the fugitive servant clause of the Constitution is a clause of compact between the

States, and confers no legislative power upon Congress. He has arrayed history and reason in support of this proposition ; and I avow my conviction, now and here, that, logically and historically, his argument is impregnable, entirely impregnable. . . . .

"Let me add, Mr. President, that in my judgment the speech of my friend from Massachusetts will mark AN ERA in American history. It will distinguish the day when the advocates of that theory of governmental policy, constitutional construction, which he has so ably defended and so brilliantly illustrated, no longer content to stand on the defensive in the contest with Slavery, boldly attacked the very citadel of its power, in that doctrine of finality which two of the political parties of the country, through their national organizations, are endeavoring to establish as the impregnable defence of its usurpations."

On the close of the debate, the proposition of Mr. Sumner was rejected by the following vote.

YEAS, — Messrs. Chase, Hale, Sumner, and Wade, — 4.

NAYS, — Messrs. Adams, Badger, Bayard, Bell, Borland, Bradbury, Bright, Brodhead, Brooke, Butler, Cass, Charlton, Clarke, Clemens, Cooper, Dawson, De Saussure, Dodge, of Iowa, Douglas, Felch, Fish, Geyer, Gwin, Hamlin, Houston, Hunter, James, Jones, of Iowa, King, Mallory, Mangum, Mason, Meriwether, Miller, Morton, Pearce, Pratt, Rusk, Shields, Smith, Soulé, Spruance, Toucey, Underwood, Upham, Walker, and Weller, — 47.

Mr. Seward was absent, — probably constrained by his prominence as a supporter of General Scott.

This speech, when published, found an extensive echo. It was circulated not only through the press, but in large pamphlet editions, amounting to several hundred thousand. It was translated into German. Two or more editions appeared in England. In the preface to the English edition of "Uncle Tom's Cabin," Lord Carlisle associated the speech with that work, and signalized "the closeness of its logic and the masculine vigor of its eloquence." Lord Shaftesbury, in a letter to the London Times, wrote, "What noble eloquence!" Mr. Combe, the phrenologist, in a letter to a distinguished American, which was published at the time, said : "I have read every word of this speech with pleasure and with pain. The pain arose from the subject, — the pleasure from sympathy with and admiration of the speaker. I have long desired to know the merits of that most cruel and iniquitous enactment, and this speech has made them clear as day."

The London Examiner said: "Apart from its noble and affecting eloquence, it is one of the closest and most convincing arguments we have ever read on the policy of the earlier and greater, as contrasted with that of the later and meaner statesmen of America." These testimonies might be accumulated. They are introduced only so far as may be important in giving an idea of the contemporaneous reception of this speech. The title had a vogue beyond the speech itself, as it became one of the countersigns of our politics.

Letters also illustrate the speech. Mr. Seward, who was not in his seat at its delivery, wrote, on reading it: "Your speech is an admirable, a great, a very great one. That is my opinion, and everybody around me, of all sorts, confesses it." Mr. Chase wrote also: "I have read, as well as heard, your truly great speech. Hundreds of thousands will read it, and everywhere it will carry conviction to all willing to be convinced, and will infuse a feeling of incertitude and a fearful looking for judgment in the minds of those who resist the light and toil in the harness of party platforms irreconcilable with justice." Mr. Wilson, who had not yet been elected to the Senate, wrote: "I have read your glorious speech. How proud I am that God gave me the power to aid in placing you in the Senate! You have exhausted the question. Hereafter all that can be said will be to repeat your speech. It will afford to any one the most complete view of the questions in dispute of anything ever published." Hon. Stephen C. Phillips, who had taken a leading part in the Free-Soil organization of Massachusetts, wrote: "I regard it as a contribution of inestimable value to our noble cause, worth all the labor, all the time, all the self-sacrifice, and all the misrepresentation it has cost you. It is statesmanlike in all its features, and does all that is necessary to place our simple and entire design in its true light before the country, and before the world, and in the records of history." Wendell Phillips, while differing on some points, wrote: "I have read your speech with envious admiration. It is admirable, both as a masterly argument and a noble testimony, and will endear you to thousands." These extracts, which might be extended, show the response to this effort.

SPEECH.

THURSDAY, *26th August*, 1852. — The Civil and Diplomatic Appropriation Bill being under consideration, the following amendment was moved by Mr. Hunter, of Virginia, on the recommendation of the Committee on Finance.

"That, where the ministerial officers of the United States have or shall incur extraordinary expense in executing the laws thereof, the payment of which is not specifically provided for, the President of the United States is authorized to allow the payment thereof, under the special taxation of the District or Circuit Court of the District in which the said services have been or shall be rendered, to be paid from the appropriation for defraying the expenses of the Judiciary."

MR. SUMNER seized the opportunity for which he had been waiting, and at once moved the following amendment to the amendment: —

"*Provided*, That no such allowance shall be authorized for any expenses incurred in executing the Act of September 18, 1850, for the surrender of fugitives from service or labor; which said Act is hereby repealed."

On this he took the floor, and spoke as follows.

MR. PRESIDENT, — Here is a provision for extraordinary expenses incurred in executing the laws of the United States. Extraordinary expenses! Sir, beneath these specious words lurks the very subject on which, by a solemn vote of this body, I was refused a hearing. Here it is; no longer open to the charge of being an "abstraction," but actually presented for practical legislation; not introduced by me, but by the Senator from Virginia [MR. HUNTER], on the recommendation of an important committee of the Senate; not

brought forward weeks ago, when there was ample time for discussion, but only at this moment, without any reference to the late period of the session. The amendment which I offer proposes to remove one chief occasion of these extraordinary expenses. Beyond all controversy or cavil it is strictly in order. And now, at last, among these final crowded days of our duties here, but at this earliest opportunity, I am to be heard, — not as a favor, but as a right. The graceful usages of this body may be abandoned, but the established privileges of debate cannot be abridged. Parliamentary courtesy may be forgotten, but parliamentary law must prevail. The subject is broadly before the Senate. By the blessing of God it shall be discussed.

Sir, a severe lawgiver of early Greece vainly sought to secure permanence for his imperfect institutions by providing that the citizen who at any time attempted their repeal or alteration should appear in the public assembly with a halter about his neck, ready to be drawn, if his proposition failed. A tyrannical spirit among us, in unconscious imitation of this antique and discarded barbarism, seeks to surround an offensive institution with similar safeguard. In the existing distemper of the public mind, and at this present juncture, no man can enter upon the service which I now undertake, without personal responsibility, such as can be sustained only by that sense of duty which, under God, is always our best support. That personal responsibility I accept. Before the Senate and the country let me be held accountable for this act and for every word which I utter.

With me, Sir, there is no alternative. Painfully convinced of the unutterable wrong and woe of Slavery, —

profoundly believing, that, according to the true spirit of the Constitution and the sentiments of the Fathers, it can find no place under our National Government, — that it is in every respect *sectional*, and in no respect *national*, — that it is always and everywhere creature and dependant of the *States*, and never anywhere creature or dependant of the *Nation*, — and that the *Nation* can never, by legislative or other act, impart to it any support, under the Constitution of the United States, — with these convictions I could not allow this session to reach its close without making or seizing an opportunity to declare myself openly against the usurpation, injustice, and cruelty of the late intolerable enactment for the recovery of fugitive slaves. Full well I know, Sir, the difficulties of this discussion, arising from prejudices of opinion and from adverse conclusions strong and sincere as my own. Full well I know that I am in a small minority, with few here to whom I can look for sympathy or support. Full well I know that I must utter things unwelcome to many in this body, which I cannot do without pain. Full well I know that the institution of Slavery in our country, which I now proceed to consider, is as sensitive as it is powerful, possessing a power to shake the whole land, with a sensitiveness that shrinks and trembles at the touch. But while these things may properly prompt me to caution and reserve, they cannot change my duty, or my determination to perform it. For this I willingly forget myself and all personal consequences. The favor and good-will of my fellow-citizens, of my brethren of the Senate, Sir, grateful to me as they justly are, I am ready, if required, to sacrifice. Whatever I am or may be I freely offer to this cause.

Here allow, for one moment, a reference to myself and my position. Sir, I have never been a politician. The slave of principles, I call no party master. By sentiment, education, and conviction a friend of Human Rights in their utmost expansion, I have ever most sincerely embraced the Democratic Idea, — not, indeed, as represented or professed by any party, but according to its real significance, as transfigured in the Declaration of Independence and in the injunctions of Christianity. In this idea I see no narrow advantage merely for individuals or classes, but the sovereignty of the people, and the greatest happiness of all secured by equal laws. Amidst the vicissitudes of public affairs I shall hold fast always to this idea, and to any political party which truly embraces it.

Party does not constrain me; nor is my independence lessened by any relations to the office which gives me a title to be heard on this floor. Here, Sir, I speak proudly. By no effort, by no desire of my own, I find myself a Senator of the United States. Never before have I held public office of any kind. With the ample opportunities of private life I was content. No tombstone for me could bear a fairer inscription than this: "Here lies one who, without the honors or emoluments of public station, did something for his fellowmen." From such simple aspirations I was taken away by the free choice of my native Commonwealth, and placed at this responsible post of duty, without personal obligation of any kind, beyond what was implied in my life and published words. The earnest friends by whose confidence I was first designated asked nothing from me, and throughout the long conflict which ended in my election rejoiced in the position which I most care-

fully guarded. To all my language was uniform: that I did not desire to be brought forward; that I would do nothing to promote the result; that I had no pledges or promises to offer; that the office should seek me, and not I the office; and that it should find me in all respects an independent man, bound to no party and to no human being, but only, according to my best judgment, to act for the good of all. Again, Sir, I speak with pride, both for myself and others, when I add that these avowals found a sympathizing response. In this spirit I have come here, and in this spirit I shall speak to-day.

Rejoicing in my independence, and claiming nothing from party ties, I throw myself upon the candor and magnanimity of the Senate. I ask your attention; I trust not to abuse it. I may speak strongly, for I shall speak openly and from the strength of my convictions. I may speak warmly, for I shall speak from the heart. But in no event can I forget the amenities which belong to debate, and which especially become this body. Slavery I must condemn with my whole soul; but here I need only borrow the language of slaveholders; nor would it accord with my habits or my sense of justice to exhibit them as the impersonation of the institution — Jefferson calls it the "enormity" [1] — which they cherish. Of them I do not speak; but without fear and without favor, as without impeachment of any person, I assail this wrong. Again, Sir, I may err; but it will be with the Fathers. I plant myself on the ancient ways of the Republic, with its grandest names, its surest landmarks, and all its original altar-fires about me.

[1] Letter to Dr. Price, August 7, 1785: Memoir, Correspondence, etc., ed. Randolph, Vol. I. p. 269; Writings, Vol. I. p. 377.

And now, on the very threshold, I encounter the objection, that there is a final settlement, in principle and substance, of the question of Slavery, and that all discussion of it is closed. Both the old political parties, by formal resolutions, in recent conventions at Baltimore, have united in this declaration. On a subject which for years has agitated the public mind, which yet palpitates in every heart and burns on every tongue, which in its immeasurable importance dwarfs all other subjects, which by its constant and gigantic presence throws a shadow across these halls, which at this very time calls for appropriations to meet extraordinary expenses it has caused, they impose the rule of silence. According to them, Sir, we may speak of everything except that alone which is most present in all our minds.

To this combined effort I might fitly reply, that, with flagrant inconsistency, it challenges the very discussion it pretends to forbid. Their very declaration, on the eve of an election, is, of course, submitted to the consideration and ratification of the people. Debate, inquiry, discussion, are the necessary consequence. Silence becomes impossible. Slavery, which you profess to banish from public attention, openly by your invitation enters every political meeting and every political convention. Nay, at this moment it stalks into this Senate, crying, like the daughters of the horseleech, "Give! give!"

But no unanimity of politicians can uphold the baseless assumption, that a law, or any conglomerate of laws, under the name of Compromise, or howsoever called, is final. Nothing can be plainer than this, — that by no parliamentary device or knot can any Legislature tie the hands of a succeeding Legislature, so as to

prevent the full exercise of its constitutional powers. Each Legislature, under a just sense of its responsibility, must judge for itself; and if it think proper, it may revise, or amend, or absolutely undo the work of any predecessor. The laws of the Medes and Persians are said proverbially to have been unalterable; but they stand forth in history as a single example where the true principles of all law have been so irrationally defied.

To make a law final, so as not to be reached by Congress, is, by mere legislation, to fasten a new provision on the Constitution. Nay, more; it gives to the law a character which the very Constitution does not possess. The wise Fathers did not treat the country as a Chinese foot, never to grow after infancy; but, anticipating progress, they declared expressly that their great Act is not final. According to the Constitution itself, there is not one of its existing provisions — not even that with regard to fugitives from labor — which may not at all times be reached by amendment, and thus be drawn into debate. This is rational and just. Sir, nothing from man's hands, nor law nor constitution, can be final. Truth alone is final.

Inconsistent and absurd, this effort is tyrannical also. The responsibility for the recent Slave Act, and for Slavery everywhere within the jurisdiction of Congress, necessarily involves the right to discuss them. To separate these is impossible. Like the twenty-fifth rule [1] of

[1] Originally the twenty-first, adopted January 28, 1840 (26th Cong. 1st Sess.), by Yeas 114, Nays 108; rescinded, on motion of John Quincy Adams, December 3, 1844 (28th Cong. 2d Sess.), by Yeas 108, Nays 80. It will be observed that the vote of the opponents of the rule was precisely the same (108) on its adoption as on its abrogation. Obviously many of the original supporters or their successors withheld their votes on the latter

the House of Representatives against petitions on Slavery, — now repealed and dishonored, — the Compromise, as explained and urged, is a curtailment of the actual powers of legislation, and a perpetual denial of the indisputable principle, that the right to deliberate is coextensive with the responsibility for an act. To sustain Slavery, it is now proposed to trample on *free speech*. In any country this would be grievous; but here, where the Constitution expressly provides against abridging freedom of speech, it is a special outrage. In vain do we condemn the despotisms of Europe, while we borrow the rigors with which they repress Liberty, and guard their own uncertain power. For myself, in no factious spirit, but solemnly and in loyalty to the Constitution, as a Senator of the United States, representing a free Commonwealth, I protest against this wrong. On Slavery, as on every other subject, I claim the right to be heard. That right I cannot, I will not abandon. "Give me the liberty to know, to utter, and to argue freely according to conscience, above all liberties": [1] these are glowing words, flashed from the soul of John Milton in his struggles with English tyranny. With equal fervor they should be echoed now by every American not already a slave.

But, Sir, this effort is impotent as tyrannical. Convictions of the heart cannot be repressed. Utterances of conscience must be heard. They break forth with irrepressible might. As well attempt to check the tides

occasion. The rule in question was in these words: "No petition, memorial, resolution, or other paper, praying the abolition of slavery in the District of Columbia, or any State or Territory, or the slave-trade between the States or Territories of the United States in which it now exists, shall be received by this House, or entertained in any way whatever."

[1] Milton, Areopagitica: A Speech for the Liberty of Unlicensed Printing: Prose Works, ed. Symmons, Vol. I. p. 325.

of Ocean, the currents of the Mississippi, or the rushing waters of Niagara. The discussion of Slavery will proceed, wherever two or three are gathered together, — by the fireside, on the highway, at the public meeting, in the church. The movement against Slavery is from the Everlasting Arm. Even now it is gathering its forces, soon to be confessed everywhere. It may not be felt yet in the high places of office and power, but all who can put their ears humbly to the ground will hear and comprehend its incessant and advancing tread.

The relations of the National Government to Slavery, though plain and obvious, are constantly misunderstood. A popular belief at this moment makes Slavery a national institution, and of course renders its support a national duty. The extravagance of this error can hardly be surpassed. An institution which our fathers most carefully omitted to name in the Constitution, which, according to the debates in the Convention, they refused to cover with any "sanction," and which, at the original organization of the Government, was merely *sectional*, existing nowhere on the *national* territory, is now, above all other things, blazoned as national. Its supporters pride themselves as national. The old political parties, while upholding it, claim to be national. A National Whig is simply a Slavery Whig, and a National Democrat is simply a Slavery Democrat, in contradistinction to all who regard Slavery as a sectional institution, within the exclusive control of the States, and with which the nation has nothing to do.

As Slavery assumes to be national, so, by an equally strange perversion, Freedom is degraded to be sectional, and all who uphold it, under the National Constitution, are made to share this same epithet. Honest efforts to

secure its blessings everywhere within the jurisdiction of Congress are scouted as sectional; and this cause, which the founders of our National Government had so much at heart, is called *Sectionalism*. These terms, now belonging to the commonplaces of political speech, are adopted and misapplied by most persons without reflection. But here is the power of Slavery. According to a curious tradition of the French language, Louis the Fourteenth, the Grand Monarch, by an accidental error of speech, among supple courtiers, changed the gender of a noun. But Slavery does more. It changes word for word. It teaches men to say *national* instead of *sectional*, and *sectional* instead of *national*.

Slavery national! Sir, this is a mistake and absurdity, fit to have a place in some new collection of Vulgar Errors, by some other Sir Thomas Browne, with the ancient, but exploded stories, that the toad has a gem in its head, and that ostriches digest iron. According to the true spirit of the Constitution, and the sentiments of the Fathers, *Slavery*, and not Freedom, is *sectional*, while *Freedom*, and not Slavery, is *national*. On this unanswerable proposition I take my stand, and here commences my argument.

The subject presents itself under two principal heads: first, *the true relations of the National Government to Slavery*, wherein it will appear that there is no national fountain from which Slavery can be derived, and no national power, under the Constitution, by which it can be supported. Enlightened by this general survey, we shall be prepared to consider, secondly, *the true nature of the provision for the rendition of fugitives from service*, and herein especially the unconstitutional and offensive legislation of Congress in pursuance thereof.

I.

AND NOW for THE TRUE RELATIONS OF THE NATIONAL GOVERNMENT TO SLAVERY. These are readily apparent, if we do not neglect well-established principles.

If Slavery be national, if there be any power in the National Government to uphold this institution,—as in the recent Slave Act,—it must be by virtue of the Constitution. Nor can it be by mere inference, implication, or conjecture. According to the uniform admission of courts and jurists in Europe, again and again promulgated in our country, Slavery can be derived only from clear and special recognition. "The state of Slavery," said Lord Mansfield, pronouncing judgment in the great case of Sommersett, "is of such a nature, that it is incapable of being introduced on any reasons, moral or political, *but only by positive law*. . . . . It is so odious, that *nothing can be suffered to support it* but POSITIVE LAW."[1] And a slaveholding tribunal,—the Supreme Court of Mississippi,—adopting the same principle, has said:—

"Slavery is condemned by reason and the Laws of Nature. It exists, and can *only* exist, through municipal regulations."[2]

And another slaveholding tribunal—the Court of Appeals of Kentucky—has said:—

"We view this as a right existing by *positive law* of a municipal character, without foundation in the Law of Nature or the unwritten and Common Law."[3]

Of course every power to uphold Slavery must have

[1] Howell's State Trials, Vol. XX. col. 82.
[2] Harry et al. *v.* Decker et al., Walker, 42.
[3] Rankin *v.* Lydia, 2 Marshall, 470.

an origin as distinct as that of Slavery itself. Every presumption must be as strong against such a power as against Slavery. A power so peculiar and offensive, so hostile to reason, so repugnant to the Law of Nature and the inborn Rights of Man, — which despoils its victim of the fruits of labor, — which substitutes concubinage for marriage, — which abrogates the relation of parent and child, — which, by denial of education, abases the intellect, prevents a true knowledge of God, and murders the very soul, — which, amidst a plausible physical comfort, degrades man, created in the divine image, to the state of a beast, — such a power, so eminent, so transcendent, so tyrannical, so unjust, can find no place in any system of Government, unless by virtue of *positive sanction.* It can spring from no doubtful phrase. It must be declared by unambiguous words, incapable of a double sense.

Slavery, I repeat, is not mentioned in the Constitution. The name Slave does not pollute this Charter of our Liberties. No "positive" language gives to Congress any *power* to make a slave or to hunt a slave. To find even any seeming sanction for either, we must travel, with doubtful footstep, beyond express letter, into the region of interpretation. But here are rules which cannot be disobeyed. With electric might for Freedom, they send a pervasive influence through every provision, clause, and word of the Constitution. Each and all make Slavery impossible as a national institution. They shut off from the Constitution every fountain out of which it can be derived.

First, and foremost, is the *Preamble.* This discloses the prevailing objects and principles of the Constitution. This is the vestibule through which all must

pass who would enter the sacred temple. Here are the inscriptions by which they are earliest impressed. Here is first seen the genius of the place. Here the proclamation of Liberty is soonest heard. "We, the People of the United States," says the Preamble, "in order to form a more perfect Union, *establish justice,* insure domestic tranquillity, provide for the common defence, *promote the general welfare, and secure the blessings of Liberty* to ourselves and our posterity, do ordain and establish this Constitution for the United States of America." Thus, according to undeniable words, the Constitution was ordained, not to establish, secure, or sanction Slavery, — not to promote the special interests of Slaveholders, — not to make Slavery national, in any way, form, or manner, — but to "establish justice," "promote the general welfare," and "secure the blessings of Liberty." Here, surely, Liberty is national.

Secondly. Next to the Preamble in importance are the explicit *contemporaneous declarations* in the Convention which framed the Constitution, and elsewhere, expressed in different forms of language, but all tending to the same conclusion. By the Preamble the Constitution speaks for Freedom. By these declarations the Fathers speak as the Constitution speaks. Early in the Convention, Gouverneur Morris, of Pennsylvania, broke forth in the language of an Abolitionist: "*He never would concur in upholding domestic slavery.* It was a nefarious institution. It was the curse of Heaven on the States where it prevailed."[1] These positive words, in harmony with other things from the same quarter, show a vehement determination that Slavery should not be national.

[1] Madison's Debates, August 8, 1787.

At a later day a discussion ensued on the clause touching the African slave-trade, which reveals the definitive purposes of the Convention. From the report of Mr. Madison we learn what was said. Oliver Ellsworth, of Connecticut, said: "The morality or wisdom of Slavery are considerations belonging to the States themselves."[1] According to him, Slavery was sectional. Elbridge Gerry, of Massachusetts, "thought we had nothing to do with the conduct of the States as to slaves, *but ought to be careful not to give any sanction to it.*"[2] According to him, Slavery is sectional, and he would not make it national. Roger Sherman, of Connecticut, "was opposed to a tax on slaves imported, as making the matter worse, *because it implied they were property.*"[3] He would not have Slavery national. After debate, the subject was referred to a committee of eleven, who reported a substitute, authorizing "a tax or duty on such migration or importation, at a rate *not exceeding the average of the duties laid on imports.*"[4] This language, classifying *persons* with merchandise, seemed to imply a recognition that they were *property.* Mr. Sherman at once declared himself "against this part, *as acknowledging men to be property,* by taxing them as such under the character of slaves."[5] Mr. Gorham "thought that Mr. Sherman should consider the duty, *not as implying that slaves are property,* but as a discouragement to the importation of them."[6] Mr. Madison, in mild juridical phrase, "*thought it wrong to admit in the Constitution the idea that there could be property in men.*"[7] After discussion it was finally agreed to make the clause read: —

[1] Madison's Debates, Aug. 21, 1787.
[2] Ibid., Aug. 22.
[3] Ibid.
[4] Ibid., Aug. 24.
[5] Ibid., Aug. 25.
[6] Ibid.
[7] Ibid.

"But a tax or duty may be imposed on such importation, not exceeding ten dollars *for each person.*"[1]

The difficulty seemed then to be removed, and the whole clause was adopted. This record demonstrates that the word "persons" was employed to show that slaves, everywhere under the Constitution, are always to be regarded as *persons*, and not as *property*, and thus to exclude from the Constitution all idea that there can be property in man. Remember well, that Mr. Sherman was opposed to the clause in its original form, "as acknowledging men to be *property*," — that Mr. Madison was also opposed to it, because he "thought it *wrong* to admit in the Constitution the idea that there could be property in men," — and that, after these objections, the clause was so amended as to exclude the idea. But Slavery cannot be national, unless this idea is distinctly and unequivocally admitted into the Constitution.

The evidence still accumulates. At a later day in the proceedings of the Convention, as if to set the seal upon the solemn determination to have no sanction of Slavery in the Constitution, the word "servitude," which appeared in the clause on the apportionment of representatives and taxes was struck out, and the word "service" inserted. This was done by unanimous vote, on the motion of Mr. Randolph, of Virginia; and the reason assigned for this substitution, according to Mr. Madison, in his authentic report of the debate, was, that "the former was thought to express the condition of slaves, and the latter *the obligations of free persons.*"[2] With such care was Slavery excluded from the Constitution.

[1] Madison's Debates, Aug. 25.
[2] Ibid., Sept. 13.

Nor is this all. In the Massachusetts Convention, to which the Constitution, when completed, was submitted for ratification, a veteran of the Revolution, General Heath, openly declared, that, according to his view, Slavery was sectional, and not national. His language was pointed. "I apprehend," he said, "that it is not in our power *to do anything for or against those who are in slavery in the Southern States.* No gentleman within these walls detests every idea of Slavery more than I do; it is generally detested by the people of this Commonwealth; and I ardently hope that the time will soon come when our brethren in the Southern States will view it as we do, and put a stop to it; but to this we have no right to compel them. Two questions naturally arise: *If we ratify the Constitution, shall we do anything by our act to hold the blacks in slavery? or shall we become partakers of other men's sins? I think neither of them.*"[1]

Afterwards, in the first Congress under the Constitution, on a motion, much debated, for a duty on the importation of slaves, the same Roger Sherman, who in the National Convention opposed the idea of property in man, authoritatively exposed the true relations of the Constitution to Slavery. His language was, that "the Constitution does not consider these persons as a species of property; it speaks of them as persons."[2]

Thus distinctly and constantly, from the very lips of the framers of the Constitution, we learn the falsehood of recent assumptions in favor of Slavery and in derogation of Freedom.

[1] Debates, Resolutions, etc., of the Convention of Massachusetts, January 30, 1788.

[2] Annals of Congress, 1st Cong. 1st Sess., col. 342.

Thirdly. According to a familiar rule of interpretation, all laws concerning the same matter, *in pari materia*, are to be construed together. By the same reason, *the grand political acts of the Nation are to be construed together*, giving and receiving light from each other. Earlier than the Constitution was the Declaration of Independence, embodying, in immortal words, those primal truths to which our country pledged itself with baptismal vows as a Nation. "We hold these truths to be self-evident," says the Nation: "that all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among these are life, *liberty*, and the pursuit of happiness; that to secure these rights governments are instituted among men, deriving their just powers from the consent of the governed." But this does not stand alone. There is another national act of similar import. On the successful close of the Revolution, the Continental Congress, in an Address to the States, repeated the same lofty truth. "Let it be remembered," said the Nation again, "that it has ever been the pride and boast of America, *that the rights for which she contended were the rights of human nature.* By the blessing of the Author of *these rights* on the means exerted for their defence, they have prevailed against all opposition, and FORM THE BASIS of thirteen independent States."[1] Such were the acts of the Nation in its united capacity. Whatever may be the privileges of States in their individual capacities, within their several local jurisdictions, no power can be attributed to the Nation, in the absence of positive, unequivocal grant, inconsistent with these two national declarations. Here, Sir, is the national heart,

[1] Journal of Congress, April 26, 1783, Vol. VIII. p. 201.

the national soul, the national will, the national voice, which must inspire our interpretation of the Constitution, entering into all the national legislation and spreading through all its parts. Thus again is Freedom national.

Fourthly. Beyond these is a principle of the Common Law, clear and indisputable, a supreme rule of interpretation, from which in this case there can be no appeal. In any question under the Constitution *every word must be construed in favor of Liberty.* This rule, which commends itself to the natural reason, is sustained by time-honored maxims of early jurisprudence. Blackstone aptly expresses it, when he says that "the law is always ready to catch at anything in favor of Liberty."[1] The rule is repeated in various forms. *Favores ampliandi sunt; odia restringenda:* "Favors are to be amplified; hateful things to be restrained." *Lex Angliæ est lex misericordiæ:* "The law of England is a law of mercy." *Angliæ jura in omni casu Libertati dant favorem:* "The laws of England in every case show favor to Liberty." And this sentiment breaks forth in natural, though intense force, in the maxim, *Impius et crudelis judicandus est qui Libertati non favet:* "He is to be adjudged impious and cruel who does not favor Liberty." Reading the Constitution in the admonition of these rules, Freedom, again I say, is national.[2]

[1] Commentaries, Vol. II. p. 94.

[2] These maxims are enforced with beautiful earnestness in a tract which appeared at Baltimore shortly after the adoption of the Constitution, with the following title-page: "Letter from Granville Sharp, Esq., of London, to the Maryland Society for Promoting the Abolition of Slavery and the Relief of Free Negroes and others unlawfully held in Bondage. Published by Order of the Society. Baltimore: Printed by D. Graham, L. Yundt, and W. Patton, in Calvert Street, near the Court-House. M.DCC.XCIII."

Fifthly. From a learned judge of the Supreme Court of the United States, in an opinion of the Court, we derive the same lesson. In considering the question, whether a State can prohibit the importation of slaves as merchandise, and whether Congress, in the exercise of its power to regulate commerce among the States, can interfere with the slave-trade between the States, a principle was enunciated, which, while protecting the trade from any intervention of Congress, declares openly that the Constitution acts upon no man as property. Mr. Justice McLean says: "If slaves are considered in some of the States as merchandise, that cannot divest them of the leading and controlling quality of persons, by which they are designated in the Constitution. The character of property is given them by the local law. This law is respected, and all rights under it are protected, by the Federal authorities; *but the Constitution acts upon slaves as* PERSONS, *and not as property.* . . . . The power over Slavery belongs to the States respectively. It is local in its character, and in its effects."[1] Here again Slavery is sectional, while Freedom is national.

Sir, such, briefly, are the rules of interpretation, which, as applied to the Constitution, fill it with the breath of Freedom,—

"Driving far off each thing of sin and guilt."[2]

To the *history and prevailing sentiments* of the times we may turn for further assurance. In the spirit of Freedom the Constitution was formed. In this spirit our fathers always spoke and acted. In this spirit the

[1] Groves et al. *v.* Slaughter, 15 Peters, 507, 508.
[2] Milton, Comus, 456.

National Government was first organized under Washington. And here I recall a scene, in itself a touchstone of the period, and an example for us, upon which we may look with pure national pride, while we learn anew the relations of the National Government to Slavery.

The Revolution was accomplished. The feeble Government of the Confederation passed away. The Constitution, slowly matured in a National Convention, discussed before the people, defended by masterly pens, was adopted. The Thirteen States stood forth a Nation, where was unity without consolidation, and diversity without discord. The hopes of all were anxiously hanging upon the new order of things and the mighty procession of events. With signal unanimity Washington was chosen President. Leaving his home at Mount Vernon, he repaired to New York, — where the first Congress had commenced its session, — to assume his place as elected Chief of the Republic. On the 30th of April, 1789, the organization of the Government was completed by his inauguration. Entering the Senate Chamber, where the two Houses were assembled, he was informed that they awaited his readiness to receive the oath of office. Without delay, attended by the Senators and Representatives, with friends and men of mark gathered about him, he moved to the balcony in front of the edifice. A countless multitude, thronging the open ways, and eagerly watching this great espousal,

> "With reverence look on his majestic face,
> Proud to be less, but of his godlike race." [1]

The oath was administered by the Chancellor of New

[1] Dryden, Epistle XVI. [XIV.], To Sir Godfrey Kneller.

York. At such time, and in such presence, beneath the unveiled heavens, Washington first took this vow upon his lips: "I do solemnly swear that I will faithfully execute the office of President of the United States, and will, to the best of my ability, preserve, protect, and defend the Constitution of the United States."

Over the President, on this new occasion, floated the national flag, with its stripes of red and white, its stars on a field of blue. As his patriot eye rested upon the glowing ensign, what currents must have rushed swiftly through his soul! In the early days of the Revolution, in those darkest hours about Boston, after the Battle of Bunker Hill, and before the Declaration of Independence, the thirteen stripes had been first unfurled by him, as the emblem of Union among the Colonies for the sake of Freedom. By him, at that time, they had been named the Union Flag. Trial, struggle, and war were now ended, and the Union, which they first heralded, was unalterably established. To every beholder these memories must have been full of pride and consolation. But, looking back upon the scene, there is one circumstance which, more than all its other associations, fills the soul, — more even than the suggestions of Union, which I prize so much. AT THIS MOMENT, WHEN WASHINGTON TOOK HIS FIRST OATH TO SUPPORT THE CONSTITUTION OF THE UNITED STATES, THE NATIONAL ENSIGN, NOWHERE WITHIN THE NATIONAL TERRITORY, COVERED A SINGLE SLAVE. Then, indeed, was Slavery Sectional, and Freedom National.

On the sea an execrable piracy, the trade in slaves, to the national scandal, was still tolerated under the national flag. In the States, as a sectional institution, beneath the shelter of local laws, Slavery unhappily

found a home. But in the only territories at this time belonging to the nation, the broad region of the Northwest, it was already made impossible, by the Ordinance of Freedom, even before the adoption of the Constitution. The District of Columbia, with its Fatal Dowry, was not yet acquired.

The government thus organized was Antislavery in character. Washington was a slaveholder, but it would be unjust to his memory not to say that he was an Abolitionist also. His opinions do not admit of question. Only a short time before the formation of the National Constitution, he declared, by letter, that it was "among his first wishes to see some plan adopted by which Slavery in this country might be abolished by law";[1] and again, in another letter, that, in support of any legislative measure for the abolition of Slavery, his suffrage should "never be wanting";[2] and still further, in conversation with a distinguished European Abolitionist, a travelling propagandist of Freedom, Brissot de Warville, recently welcomed to Mount Vernon, he openly announced, that, to promote this object in Virginia, "he desired the formation of a SOCIETY, and that he would second it."[3] By this authentic testimony he takes his place with the early patrons of Abolition Societies.

By the side of Washington, as, standing beneath the national flag, he swore to support the Constitution, were illustrious men, whose lives and recorded words now

[1] Letter to John F. Mercer, September 9, 1786: Writings, ed. Sparks, Vol. IX. p. 159, note.

[2] Letter to Robert Morris, April 12, 1786: Writings, ed. Sparks, Vol. IX. p. 159.

[3] Brissot de Warville, New Travels in the United States, 2d ed., Vol. I. pp. 246, 247.

rise in judgment. There was John Adams, the Vice-President, great vindicator and final negotiator of our national independence, whose soul, flaming with Freedom, broke forth in the early declaration, that "consenting to Slavery is a sacrilegious breach of trust,"[1] and whose immitigable hostility to this wrong is immortal in his descendants. There also was a companion in arms and attached friend, of beautiful genius, the yet youthful and "incomparable" Hamilton,— fit companion in early glories and fame with that darling of English history, Sir Philip Sidney, to whom the latter epithet has been reserved,— who, as member of the Abolition Society of New York, had recently united in a solemn petition for those who, though "*free by the laws of God,* are held in Slavery *by the laws of this State.*"[2] There, too, was a noble spirit, of spotless virtue, the ornament of human nature, who, like the sun, ever held an unerring course,— John Jay. Filling the important post of Secretary for Foreign Affairs under the Confederation, he found time to organize the "Society for Promoting the Manumission of Slaves" in New York, and to act as its President, until, by the nomination of Washington, he became Chief Justice of the United States. In his sight Slavery was an "iniquity," "a sin of crimson dye," against which ministers of the Gospel should testify, and which the Government should seek in every way to abolish. "Till America comes into this measure," he wrote, "her prayers to Heaven for liberty will be impious. This is a strong expression, but it is just. Were I in your Legislature, I would prepare a

[1] Dissertation on the Canon and Feudal Law: Works, Vol. III. p. 463.

[2] Life and Writings of John Jay, Vol. I. p. 231. Slavery and Anti-Slavery, by William Goodell, p. 97.

bill for the purpose with great care, and I would never cease moving it till it became a law or I ceased to be a member."[1] Such words as these, fitly coming from our leaders, belong to the true glories of the country: —

> "While we such precedents can boast at home,
> Keep thy Fabricius and thy Cato, Rome!"

They stood not alone. The convictions and earnest aspirations of the country were with them. At the North these were broad and general. At the South they found fervid utterance from slaveholders. By early and precocious efforts for "total emancipation," the author of the Declaration of Independence placed himself foremost among the Abolitionists of the land. In language now familiar to all, and which can never die, he perpetually denounced Slavery. He exposed its pernicious influence upon master as well as slave, declared that the love of justice and the love of country pleaded equally for the slave, and that "the abolition of domestic slavery was the greatest object of desire." He believed that "the sacred side was gaining daily recruits," and confidently looked to the young for the accomplishment of this good work.[2] In fitful sympathy with Jefferson was another honored son of Virginia, the Orator of Liberty, Patrick Henry, who, while confessing that he was a master of slaves, said: "I will not, I cannot justify it. However culpable my conduct, I will so far pay my devoir to Virtue as to own the excellence and rectitude of her precepts, and lament my want of con-

[1] Life and Writings, Vol. I. pp. 229, 230.

[2] Notes on Virginia, Query XVIII.: Writings, Vol. VIII. pp. 403, 404. Summary View of the Rights of British America: American Archives, 4th Ser. Vol. I. col 696; Writings, Vol. I. p. 135. Letter to Dr. Price, August 7, 1785: Writings, Vol. I. p. 377.

formity to them." [1] At this very period, in the Legislature of Maryland, on a bill for the relief of oppressed slaves, a young man, afterwards by consummate learning and forensic powers acknowledged head of the American bar, William Pinkney, in a speech of earnest, truthful eloquence, — better for his memory than even his professional fame, — branded Slavery as "iniquitous and most dishonorable," "founded in a disgraceful traffic," "its continuance as shameful as its origin"; and he openly declared, that "by the eternal principles of natural justice, no master in the State has a right to hold his slave in bondage for a single hour." [2]

Thus at that time spoke the NATION. The CHURCH also joined its voice. And here, amidst diversities of religious faith, it is instructive to observe the general accord. Quakers first bore their testimony. At the adoption of the Constitution, their whole body, under the early teaching of George Fox, and by the crowning exertions of Benezet and Woolman, had become an organized band of Abolitionists, penetrated by the conviction that it was unlawful to hold a fellow-man in bondage. Methodists, numerous, earnest, and faithful, never ceased by their preachers to proclaim the same truth. Their rules in 1788 denounced, in formal language, "the buying or selling the bodies and souls of men, women, or children, with an intention to enslave them." [3] The words of their great apostle, John Wesley, were constantly repeated. On the eve of the National Conven-

[1] Letter to Robert Pleasants, January 18, 1779: Goodloe's Southern Platform, p. 79.

[2] Speeches in the House of Delegates of Maryland in 1788 and 1789: Wheaton's Life of Pinkney, p. 11; American Museum for 1789, Vol. VI. p. 75.

[3] Bangs's History of the Methodist Episcopal Church in the United States, Vol. I. pp. 213, 218.

tion, that burning tract was circulated in which he exposes American Slavery as "vilest" of the world, — "such slavery as is not found among the Turks at Algiers"; and after declaring "Liberty the right of every human creature," of which "no human law can deprive him," he pleads, "If, therefore, you have any regard to justice (to say nothing of mercy, nor the revealed law of God), render unto all their due. Give liberty to whom liberty is due, — that is, to every child of man, to every partaker of human nature."[1] At the same time the Presbyterians, a powerful religious body, inspired by the principles of John Calvin, in more moderate language, but by a public act, recorded their judgment, recommending "to all their people to use the most prudent measures, consistent with the interest and the state of civil society in the counties where they live, *to procure eventually the final abolition of Slavery in America.*"[2] The Congregationalists of New England, also nurtured in the faith of John Calvin, and with the hatred of Slavery belonging to the great Nonconformist, Richard Baxter, were sternly united against this wrong. As early as 1776, Samuel Hopkins, their eminent leader and divine, published his tract showing it to be the Duty and Interest of the American Colonies to emancipate all their African slaves, and declaring that Slavery is "in every instance wrong, unrighteousness, and oppression, — a very great and crying sin, — there being nothing of the kind equal to it on the face of the earth."[3] And in 1791, shortly after the adoption of the Constitution, the second Jonathan Edwards, a twice-

[1] Thoughts upon Slavery, by John Wesley, (London, 1774,) pp. 24, 27.

[2] Minutes of the Synod of New York and Philadelphia, 1787: Records of the Presbyterian Church in the United States, p. 540.

[3] A Dialogue concerning the Slavery of the Africans: Works, Vol. II. p. 552.

honored name, in an elaborate discourse often published, called upon his country, in "the present blaze of light" on the injustice of Slavery, to "prepare the way for its total abolition." This he gladly thought at hand. "If we judge of the future by the past," said the celebrated preacher, "within fifty years from this time it will be as shameful for a man to hold a negro slave as to be guilty of common robbery or theft." [1]

Thus, at this time, the Church, in harmony with the Nation, by its leading denominations, Quakers, Methodists, Presbyterians, and Congregationalists, thundered against Slavery. The COLLEGES were in unison with the Church. Harvard University spoke by the voice of Massachusetts, which already had abolished Slavery. Dartmouth College, by one of its learned Professors, claimed for the slaves "an equal standing, in point of privileges, with the whites." [2] Yale College, by its President, the eminent divine, Ezra Stiles, became the head of the Abolition Society of Connecticut.[3] And the University of William and Mary, in Virginia, at this very time testified its sympathy with the cause by conferring upon Granville Sharp, the acknowledged chief of British Abolitionists, the honorary degree of Doctor of Laws.[4]

The LITERATURE of the land, such as then existed, agreed with the Nation, the Church, and the College.

[1] The Injustice and Impolicy of the Slave-Trade, and of the Slavery of the Africans, (Providence, 1792,) pp. 27 – 30.

[2] Tyrannical Liberty-Men: A Discourse on Negro Slavery in the United States, February 19, 1795, by Moses Fiske, Tutor in Dartmouth College. American Quarterly Register, May, 1840. Weld, Power of Congress over the District of Columbia, p. 33.

[3] Kingsley's Life of Stiles: Sparks's American Biography, Second Series, Vol. VI. p. 69.

[4] Hoare's Memoirs of Sharp, p. 254. Weld's Power of Congress, p. 34.

Franklin, in the last literary labor of his life,[1] — Jefferson, in his "Notes on Virginia," — Barlow, in his heroic verse, — Rush, in a work which inspired the praise of Clarkson,[2] — the ingenious author of the "Algerine Captive," the earliest American novel, and, though now but little known, one of the earliest American books republished in London, — were all moved by the contemplation of Slavery. "If our fellow-citizens in the Southern States are deaf to the pleadings of Nature," exclaims the last earnestly, "I will conjure them, for the sake of consistency, to cease to deprive their fellow-creatures of freedom, which their writers, their orators, representatives, senators, and even their Constitutions of Government, have declared to be the unalienable birthright of man."[3] A female writer and poet, earliest in our country among the graceful throng, Sarah Wentworth Morton, at the very period of the National Convention, admired by the polite society in which she lived, poured forth her sympathies also. The generous labors of John Jay in behalf of the crushed African inspired her muse; and in another poem, commemorating a slave who fell while vindicating his freedom, she rendered a truthful homage to his inalienable rights, in words which I now quote as testimony of the times: —

> "Does not the voice of Reason cry,
> 'Claim the first right that Nature gave,
> From the red scourge of bondage fly,
> Nor deign to live a burdened slave'?"[4]

[1] Speech of Sidi Mehemet Ibrahim in the Divan of Algiers against granting the Petition of the Sect called Erika, or Purists, for the Abolition of Piracy and Slavery: Works, ed. Sparks, Vol. II. pp. 517 - 521.

[2] An Address to the Inhabitants of the British Settlements on the Slavery of the Negroes. Clarkson's History of the Abolition of the African Slave-Trade. Vol. I. p. 152.

[3] Algerine Captive, Vol. I. p. 213.

[4] The African Chief: My Mind and its Thoughts, p. 201.

Such, Sir, at the adoption of the Constitution and the first organization of the National Government, was the outspoken, unequivocal heart of the country. Slavery was abhorred. Like the slave-trade, it was regarded as transitory; and by many it was supposed that they would disappear together. As the oracles grew mute at the coming of Christ, and a voice was heard, crying to mariners at sea, "Great Pan is dead!" so at this time Slavery became dumb, and its death seemed to be near. Voices of Freedom filled the air. The patriot, the Christian, the scholar, the writer, the poet, vied in loyalty to this cause. All were Abolitionists.

The earliest Congress under the Constitution attests this mood. One of its first acts was to accept the Ordinance of Freedom for the Northwestern Territory, thus ratifying the prohibition of Slavery in all *existing* territory. It is impossible to exaggerate the importance of this act as a national landmark, especially when we consider that on the list of those who sanctioned it were men fresh from the National Convention, and therefore familiar with the Constitution which it framed. The same Congress entertained the question of Slavery in other forms, — sometimes on memorials duly presented, and then again in debate. Virginia was heard by her Abolition Society denouncing Slavery as "not only an odious degradation, but an outrageous violation of one of the most essential rights of human nature, and utterly repugnant to the precepts of the Gospel."[1] There was another petitioner, whose illustrious services at home and abroad entitled him to speak with authority rather than with prayer. It was none other than Benjamin Franklin. After a long life of various effort, — repre-

[1] Weld, Power of Congress over the District of Columbia, p. 29.

senting his country in England during the controversies that preceded the Revolution, — returning to take his great part in the Declaration of Independence, — then representing his country in its European negotiations, — then again returning to take his great part in the formation of the National Constitution, while all the time his life was elevated by philosophy and the peculiar renown he had won, — this Apostle of Liberty, recognized as such in the two hemispheres, whose name was signed to the Declaration of Independence, was signed to the Treaty of Alliance with France, was signed to the Treaty of Independence with Great Britain, was signed to the National Constitution, now set this same name to another instrument, a simple petition to Congress. At the age of eighty-four, venerable with years, and with all the honors of philosophy, diplomacy, and statesmanship, — a triple crown never before enjoyed, — the patriot sage comes forward, as President of the Abolition Society of Pennsylvania, and entreats Congress "that it would be pleased to countenance the restoration of Liberty to those unhappy men who alone in this land of Freedom are degraded into perpetual bondage," — and then again, in concluding words, "that it would *step to the very verge of the power vested in it for discouraging every species of traffic in the persons of our fellow-men.*" [1] Shortly after this prayer the petitioner descended to his tomb, from which he still prays that Congress *will step to the very verge of the power vested in it to* DISCOURAGE *Slavery;* and this prayer, in simple words, proclaims the National policy of the Fathers. Not encouragement, but discouragement of Slavery, — not its *nationalization,* but its *denationalization,* was their rule.

1 Annals of Congress, 1st Cong. 2d Sess., col. 1198.

Sir, enough has been said to show the sentiment which, like a vital air, surrounded the National Government as it stepped into being. In the face of this history, and in the absence of any positive sanction, it is absurd to suppose that Slavery, which under the Confederation had been merely sectional, was now constituted national. Our fathers did not say, with the apostate angel, "Evil, be thou my good!" In different spirit they cried out to Slavery, "Get thee behind me, Satan!"

There is yet another link. In the discussions which took place in the local conventions on the adoption of the Constitution, a sensitive desire was manifested to surround all persons under the Constitution with additional safeguards. Fears were expressed, from the supposed indefiniteness of some of the powers conceded to the National Government, and also from the absence of a Bill of Rights. Massachusetts, on ratifying the Constitution, proposed a series of amendments, at the head of which was this, characterized by Samuel Adams, in the Convention, as "A Summary of a Bill of Rights": —

"That it be explicitly declared, that all powers not expressly delegated by the aforesaid Constitution are reserved to the several States, to be by them exercised."[1]

New Hampshire, New York, Rhode Island, Virginia, South Carolina, and North Carolina, with minorities in Pennsylvania and Maryland, united in this proposition. In pursuance of these recommendations, the First Congress presented for adoption the following article, which, being ratified by the proper number of States, became part of the Constitution as the Tenth Amendment: —

[1] Debates, etc., of the Massachusetts Convention, February 1 and 6, 1788. Elliot's Debates, Vol. IV. p. 211.

"The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

Stronger words could not be employed to limit the power under the Constitution, and to protect the people from all assumptions of the National Government, *particularly in derogation of Freedom.* Its guardian character commended it to the sagacious mind of Jefferson, who said: "I consider the foundation of the Constitution as laid on this ground."[1] And Samuel Adams, ever watchful for Freedom, said: "It removes a doubt which many have entertained respecting this matter, and gives assurance, that, *if any law made by the Federal Government shall be extended beyond the power granted by the proposed Constitution,* and inconsistent with the Constitution of this State, it will be an error, and adjudged by the courts of law to be void."[2]

Beyond all question, the National Government, ordained by the Constitution, is not general or universal, but special and particular. It is a government of limited powers. It has no power which is not delegated. Especially is this clear with regard to an institution like Slavery. The Constitution contains no power to make a king, or to support kingly rule. With similar reason it may be said, that it contains no power to make a slave, or to support a system of Slavery. The absence of all such power is hardly more clear in the one case

[1] Opinion against the Constitutionality of a National Bank, Feb. 15, 1791: Memoir, Correspondence, etc., Vol. IV. p. 523; Writings, Vol. VII. p. 556. See also Letter to Judge Johnson, June 12, 1823: Memoir, Correspondence, etc., Vol. IV. p. 374; Works, Vol. VII. p. 297.

[2] Debates, etc., of the Massachusetts Convention, February 1, 1788. See also Life of Samuel Adams, by William V. Wells, Vol. III. pp. 271, 272, 325, 331.

than in the other. But if there be no such power, all national legislation upholding Slavery must be unconstitutional and void. The stream cannot be higher than the fountain-head. Nay, more, *nothing can come out of nothing;* the stream cannot exist, if there be no spring from which it is fed.

At the risk of repetition, but for the sake of clearness, review now this argument, and gather it together. Considering that Slavery is of such an offensive character that it can find sanction only in "positive law," and that it has no such "positive" sanction in the Constitution, — that the Constitution, according to its Preamble, was ordained to "establish justice" and "secure the blessings of liberty," — that, in the Convention which framed it, and also elsewhere at the time, it was declared not to sanction Slavery, — that, according to the Declaration of Independence, and the Address of the Continental Congress, the Nation was dedicated to "Liberty," and the "rights of human nature," — that, according to the principles of the Common Law, the Constitution must be interpreted openly, actively, and perpetually for Freedom, — that, according to the decision of the Supreme Court, it acts upon slaves, *not as property*, but as PERSONS, — that, at the first organization of the National Government under Washington, Slavery had no national favor, existed nowhere on the national territory, beneath the national flag, but was openly condemned by Nation, Church, Colleges, and Literature of the time, — and, finally, that, according to an Amendment of the Constitution, the National Government can exercise only powers delegated to it, among which is none to support Slavery, — considering these things, Sir,

it is impossible to avoid the single conclusion, that Slavery is in no respect a national institution, and that the Constitution nowhere upholds property in man.

There is one other special provision of the Constitution, which I have reserved to this stage, not so much from its superior importance, but because it fitly stands by itself. This alone, if practically applied, would carry Freedom to all within its influence. It is an Amendment proposed by the First Congress, as follows:—

"No *person* shall be deprived of life, *liberty*, or property, *without due process of law.*"

Under this great ægis the liberty of every person within the national jurisdiction is unequivocally placed. I say every person. Of this there can be no question. The word "person" in the Constitution embraces every human being within its sphere, whether Caucasian, Indian, or African, from the President to the slave. Show me a person within the national jurisdiction, and I confidently claim for him this protection, no matter what his condition or race or color. The natural meaning of the clause is clear, but a single fact of its history places it in the broad light of noon. As originally recommended by Virginia, North Carolina, and Rhode Island, it was restricted to the *freeman.* Its language was, "No *freeman* ought to be deprived of his life, *liberty,* or property, but by the law of the land."[1] In rejecting this limitation, the authors of the Amendment revealed their purpose, that no person, under the National Government, of whatever character, should be deprived of lib-

[1] Journal of Federal Convention, Supplement, pp. 419, 441, 455. Elliot's Debates, II. 484, III. 211, IV. 223.

erty without due process of law, — that is, without due presentment, indictment, or other judicial proceeding. But this Amendment is nothing less than an express guaranty of Personal Liberty, and an express prohibition of its invasion anywhere, at least within the national jurisdiction.

Sir, apply these principles, and Slavery will again be as when Washington took his first oath as President. The Union Flag of the Republic will become once more the flag of Freedom, and at all points within the national jurisdiction will refuse to cover a slave. Beneath its beneficent folds, wherever it is carried, on land or sea, Slavery will disappear, like darkness under the arrows of the ascending sun, — like the Spirit of Evil before the Angel of the Lord.

In all national territories Slavery will be impossible.

On the high seas, under the national flag, Slavery will be impossible.

In the District of Columbia Slavery will instantly cease.

Inspired by these principles, Congress can give no sanction to Slavery by the admission of new Slave States.

Nowhere under the Constitution can the Nation, by legislation or otherwise, support Slavery, hunt slaves, or hold property in man.

Such, Sir, are my sincere convictions. According to the Constitution, as I understand it, in the light of the Past and of its true principles, there is no other conclusion which is rational or tenable, which does not defy authoritative rules of interpretation, does not falsify indisputable facts of history, does not affront

the public opinion in which it had its birth, and does not dishonor the memory of the Fathers. And yet politicians of the hour undertake to place these convictions under formal ban. The generous sentiments which filled the early patriots, and impressed upon the government they founded, as upon the coin they circulated, the image and superscription of LIBERTY, have lost their power. The slave-masters, few in number, amounting to not more than three hundred and fifty thousand, according to the recent census, have succeeded in dictating the policy of the National Government, and have written SLAVERY on its front. The change, which began in the desire for wealth, was aggravated by the desire for political predominance.[1] Through Slavery the cotton crop increased, with its enriching gains; through Slavery States became part of the Slave Power. And now an arrogant and unrelenting ostracism is applied, not only to all who express themselves against Slavery, but to every man unwilling to be its menial. A novel test for office is introduced, which would have excluded all the Fathers of the Republic, — even Washington, Jefferson, and Franklin! Yes, Sir! Startling it may be, but indisputable. Could these revered demigods of history once again descend upon earth and mingle in our affairs, not one of them could receive a nomination from the National Convention of either of the two old political parties! Out of the convictions of their hearts and the utterances of their lips against Slavery they would be condemned.

This single fact reveals the extent to which the

[1] The same progression in ancient Rome arrested the observation of Sallust: "Primo pecuniæ, dein imperii cupido crevit. Ea quasi materies omnium malorum fuere." — *Catilina*, c. 10

National Government has departed from its true course and its great examples. For myself, I know no better aim under the Constitution than to bring the Government back to the precise position on this question it occupied on the auspicious morning of its first organization by Washington, —

"Nunc retrorsum
Vela dare, atque iterare cursus
. . . . relictos," [1] —

that the sentiments of the Fathers may again prevail with our rulers, and the National Flag may nowhere shelter Slavery.

To such as count this aspiration unreasonable let me commend a renowned and life-giving precedent of English history. As early as the days of Queen Elizabeth, a courtier boasted that the air of England was too pure for a slave to breathe,[2] and the Common Law was said to forbid Slavery. And yet, in the face of this vaunt, kindred to that of our fathers, and so truly honorable, slaves were introduced from the West Indies. The custom of Slavery gradually prevailed. Its positive legality was affirmed, in professional opinions, by two eminent lawyers, Talbot and Yorke, each afterwards Lord Chancellor. It was also affirmed on the bench by the latter as Lord Hardwicke.[3] England was already a Slave State. The following advertisement, copied from a London newspaper, *The Public Advertiser*, of November 22, 1769, shows that the journals there were disfigured as some of ours, even in the District of Columbia.

"To be sold, a black girl, the property of J. B., eleven years of age, who is extremely handy, works at her needle

[1] Hor., Carm. I. xxxiv. 3–5.
[2] Case of Sommersett, Howell's State Trials, XX. 51.
[3] Ibid., 81.

tolerably, and speaks English perfectly well; is of an excellent temper and willing disposition. Inquire of her owner at the Angel Inn, behind St. Clement's Church, in the Strand."

At last, in 1772, only three years after this advertisement, the single question of the legality of Slavery was presented to Lord Mansfield, on a writ of *Habeas Corpus*. A poor negro, named Sommersett, brought to England as a slave, became ill, and, with an inhumanity disgraceful even to Slavery, was turned adrift upon the world. Through the charity of an estimable man, the eminent Abolitionist, Granville Sharp, he was restored to health, when his unfeeling and avaricious master again claimed him as bondman. The claim was repelled. After elaborate and protracted discussion in Westminster Hall, marked by rarest learning and ability, Lord Mansfield, with discreditable reluctance, sullying his great judicial name, but in trembling obedience to the genius of the British Constitution, pronounced a decree which made the early boast a practical verity, and rendered Slavery forever impossible in England. More than fourteen thousand persons, at that time held as slaves, and breathing English air, — four times as many as are now found in this national metropolis, — stepped forth in the happiness and dignity of freemen.

With this guiding example I cannot despair. The time will yet come when the boast of our fathers will be made a practical verity also, and Court or Congress, in the spirit of this British judgment, will proudly declare that nowhere under the Constitution can man hold property in man. For the Republic such a decree will be the way of peace and safety. As Slavery is banished from the national jurisdiction, it will cease to vex

our national politics. It may linger in the States as a local institution; but it will no longer engender national animosities, when it no longer demands national support.

II.

From this general review of the relations of the National Government to Slavery, I pass to the consideration of THE TRUE NATURE OF THE PROVISION FOR THE RENDITION OF FUGITIVES FROM SERVICE, embracing an examination of this provision in the Constitution, and especially of the recent Act of Congress in pursuance thereof. As I begin this discussion, let me bespeak anew your candor. Not in prejudice, but in the light of history and of reason, we must consider this subject. The way will then be easy, and the conclusion certain.

Much error arises from the exaggerated importance now attached to this provision, and from assumptions with regard to its origin and primitive character. It is often asserted that it was suggested by some special difficulty, which had become practically and extensively felt, anterior to the Constitution. But this is one of the myths or fables with which the supporters of Slavery have surrounded their false god. In the Articles of Confederation, while provision is made for the surrender of fugitive criminals, nothing is said of fugitive slaves or servants; and there is no evidence in any quarter, until after the National Convention, of hardship or solicitude on this account. No previous voice was heard to express desire for any provision on the subject. The story to the contrary is a modern fiction.

I put aside, as equally fabulous, the common saying,

that this provision was one of the original compromises of the Constitution, and an essential condition of Union. Though sanctioned by eminent judicial opinions, it will be found that this statement is hastily made, without any support in the records of the Convention, the only authentic evidence of the compromises; nor will it be easy to find any authority for it in any contemporary document, speech, published letter, or pamphlet of any kind. It is true that there were compromises at the formation of the Constitution, which were the subject of anxious debate; but this was not one of them.

There was a compromise between the small and large States, by which equality was secured to all the States in the Senate.

There was another compromise finally carried, under threats from the South, *on the motion of a New England member*, by which the Slave States are allowed Representatives according to the whole number of free persons and "three fifths of all other persons,"[1] thus securing political power on account of their slaves, in consideration that direct taxes should be apportioned in the same way. Direct taxes have been imposed at only four brief intervals. The political power has been constant, and at this moment sends twenty-one members to the other House.

There was a third compromise, not to be mentioned without shame. It was that hateful bargain by which Congress was restrained until 1808 from the prohibition of the foreign slave-trade, thus securing, down to that period, toleration for crime. This was pertinaciously pressed by the South, even to the extent of absolute restriction on Congress. John Rutledge said: "If the

[1] Madison's Debates, July 12, 1787.

Convention thinks that North Carolina, South Carolina, and Georgia will ever agree to the Plan [the National Constitution], unless their right to import slaves be untouched, the expectation is vain. The people of those States will never be such fools as to give up so important an interest." Charles Pinckney said: "South Carolina can never receive the Plan, if it prohibits the slave-trade." Charles Cotesworth Pinckney "thought himself bound to declare candidly, that he did not think South Carolina would stop her importations of slaves in any short time."[1] The effrontery of the slave-masters was matched by the sordidness of the Eastern members, who yielded again. Luther Martin, the eminent member of the Convention, in his contemporary address to the Legislature of Maryland, described the compromise. "I found," he said, "the Eastern States, notwithstanding their aversion to Slavery, were very willing to indulge the Southern States at least with a temporary liberty to prosecute the slave-trade, *provided the Southern States would in their turn gratify them by laying no restriction on navigation acts.*"[2] The bargain was struck, and at this price the Southern States gained the detestable indulgence. At a subsequent day Congress branded the slave-trade as piracy, and thus, by solemn legislative act, adjudged this compromise to be felonious and wicked.

Such are the three chief original compromises of the Constitution and essential conditions of Union. The case of fugitives from service is not of these. During the Convention it was not in any way associated with

1 Madison's Debates, August 21 and 22, 1787.

2 The Genuine Information delivered to the Legislature of Maryland, etc., p. 36: Appended to Vol. IV. Elliot's Debates.

these. Nor is there any evidence from the records of this body, that the provision on this subject was regarded with any peculiar interest. As its absence from the Articles of Confederation had not been the occasion of solicitude or desire, anterior to the National Convention, so it did not enter into any of the original plans of the Constitution. It was introduced tardily, at a late period of the Convention, and adopted with very little and most casual discussion. A few facts show how utterly unfounded are recent assumptions.

The National Convention was convoked to meet at Philadelphia on the second Monday in May, 1787. Several members appeared at this time, but, a majority of the States not being represented, those present adjourned from day to day until the 25th, when the Convention was organized by the choice of George Washington as President. On the 28th a few brief rules and orders were adopted. On the next day they commenced their great work.

On the same day, Edmund Randolph, of slaveholding Virginia, laid before the Convention a series of fifteen resolutions, containing his plan for the establishment of a New National Government. Here was no allusion to fugitive slaves.

Also, on the same day, Charles Pinckney, of slaveholding South Carolina, laid before the Convention what was called "A Draft of a Federal Government, to be agreed upon between the Free and Independent States of America," an elaborate paper, marked by considerable minuteness of detail. Here are provisions, borrowed from the Articles of Confederation, securing to the citizens of each State equal privileges in the several States, giving faith to the public records of the States, and

ordaining the surrender of fugitives from justice. But this draft, though from the flaming guardian of the slave interest, contained no allusion to fugitive slaves.

In the course of the Convention other plans were brought forward: on the 15th June, a series of eleven propositions by Mr. Patterson, of New Jersey, "so as to render the Federal Constitution adequate to the exigencies of Government and the preservation of the Union"; on the 18th June, eleven propositions by Mr. Hamilton, of New York, "containing his ideas of a suitable plan of Government for the United States"; and on the 19th June, Mr. Randolph's resolutions, originally offered on the 29th May, "as altered, amended, and agreed to in Committee of the Whole House." On the 26th July, twenty-three resolutions, already adopted on different days in the Convention, were referred to a "Committee of Detail," for reduction to the form of a Constitution. On the 6th August this Committee reported the finished draft of a Constitution. And yet in all these resolutions, plans, and drafts, *seven* in number, proceeding from eminent members and from able committees, no allusion is made to fugitive slaves. For three months the Convention was in session, and not a word uttered on this subject.

At last, on the 28th August, as the Convention was drawing to a close, on the consideration of the article providing for the privileges of citizens in different States, we meet the first reference to this matter, in words worthy of note. "General [Charles Cotesworth] Pinckney was not satisfied with it. He SEEMED *to wish some provision* should be included in favor of property in slaves." *But he made no proposition.* Unwilling to shock the Convention, and uncertain in his own mind, he only *seemed*

to wish such a provision. In this vague expression of a vague desire this idea first appeared. In this modest, hesitating phrase is the germ of the audacious, unhesitating Slave Act. Here is the little vapor, which has since swollen, as in the Arabian tale, to the power and dimensions of a giant. The next article under discussion provided for the surrender of fugitives from justice. Mr. Butler and Mr. Charles Pinckney, both from South Carolina, now moved openly to require "fugitive slaves and servants to be delivered up like criminals." Here was no disguise. With Hamlet, it was now said in spirit, —

"*Seems*, Madam! Nay, it is. I know not *seems*."

But the very boldness of the effort drew attention and opposition. Mr. Wilson, of Pennsylvania, the learned jurist and excellent man, at once objected: "This would oblige the Executive of the State to do it at the public expense." Mr. Sherman, of Connecticut, "saw no more propriety in the public seizing and surrendering a slave or servant than a horse." Under the pressure of these objections, *the offensive proposition was withdrawn*, — never more to be renewed. The article for the surrender of criminals was then unanimously adopted.[1] On the next day, 29th August, profiting by the suggestions already made, Mr. Butler moved a proposition, — substantially like that now found in the Constitution, — for the surrender, not of "fugitive slaves," as originally proposed, but simply of "persons bound to service or labor," which, without debate or opposition of any kind, was unanimously adopted.[2]

Here, palpably, was no labor of compromise, no ad-

[1] "Agreed to, *nem. con.*," are Madison's words.
[2] "Agreed to, *nem. con.*," are again Madison's words.

justment of conflicting interests, — nor even any expression of solicitude. The clause finally adopted was vague and faint as the original suggestion. In its natural import it is not applicable to slaves. If supposed by some to be applicable, it is clear that it was supposed by others to be inapplicable. It is now insisted that the term "*persons bound to service*," or "*held to service*," as expressed in the final revision, is the equivalent or synonym for "*slaves*." This interpretation is rebuked by an incident to which reference has been already made, but which will bear repetition. On the 13th September — a little more than a fortnight after the clause was adopted, and when, if deemed to be of any significance, it could not have been forgotten — the very word "service" came under debate, and received a fixed meaning. It was unanimously adopted as a substitute for "servitude" in another part of the Constitution, for the reason that it expressed "the *obligations of free persons*," while the other expressed "the condition of slaves." In the face of this authentic evidence, reported by Mr. Madison, it is difficult to see how the term "persons held to *service*" can be deemed to express anything beyond "the obligations of *free persons*." Thus, in the light of calm inquiry, does this exaggerated clause lose its importance.

The provision, showing itself thus tardily, and so slightly regarded in the National Convention, was neglected in much of the contemporaneous discussion before the people. In the Conventions of South Carolina, North Carolina, and Virginia, it was commended as securing important rights, though on this point there was difference of opinion. In the Virginia Convention, an eminent character, Mr. George Mason, with others, ex-

pressly declared that there was "no security of property coming within this section." In the other Conventions it was disregarded. Massachusetts, while exhibiting peculiar sensitiveness at any responsibility for Slavery, seemed to view it with unconcern. One of her leading statesmen, General Heath, in the debates of the State Convention, strenuously asserted, that, in ratifying the Constitution, the people of Massachusetts "would do nothing to hold the blacks in slavery." "The Federalist,"[1] in its classification of the powers of Congress, describes and groups a large number as "those which provide for the harmony and proper intercourse among the States," and therein speaks of the power over public records, standing next in the Constitution to the provision concerning fugitives from service; but it fails to recognize the latter among the means of promoting "harmony and proper intercourse"; nor does its triumvirate of authors anywhere allude to the provision.

The indifference thus far attending this subject still continued. The earliest Act of Congress, passed in 1793, drew little attention. It was not suggested originally by any difficulty or anxiety touching fugitives from service, nor is there any contemporary record, in debate or otherwise, showing that any special importance was attached to its provisions in this regard. The attention of Congress was directed to fugitives from justice, and, with little deliberation, it undertook, in the same bill, to provide for both cases. In this accidental manner was legislation on this subject first attempted.

There is no evidence that fugitives were often seized under this Act. From a competent inquirer we learn that twenty-six years elapsed before it was successfully

[1] No. 42.

enforced in any Free State. It is certain, that, in a case at Boston, towards the close of the last century, illustrated by Josiah Quincy as counsel, the crowd about the magistrate, at the examination, quietly and spontaneously opened a way for the fugitive, and thus the Act failed to be executed. It is also certain, that, in Vermont, at the beginning of the century, a Judge of the Supreme Court of the State, on application for the surrender of an alleged slave, accompanied by documentary evidence, gloriously refused compliance, *unless the master could show a Bill of Sale from the Almighty.* Even these cases passed without public comment.

In 1801 the subject was introduced in the House of Representatives by an effort for another Act, which, on consideration, was rejected. At a later day, in 1817–18, though still disregarded by the country, it seemed to excite a short-lived interest in Congress. In the House of Representatives, on motion of Mr. Pindall, of Virginia, a committee was appointed to inquire into the expediency of "providing more effectually by law for reclaiming servants and slaves escaping from one State into another," and a bill reported by them to amend the Act of 1793, after consideration for several days in Committee of the Whole, was passed. In the Senate, after much attention and warm debate, it passed with amendments. But on return to the House for adoption of the amendments, it was dropped.[1] This effort, which, in the discussions of this subject, has been thus far unnoticed, is chiefly remarkable as the earliest recorded evidence of the unwarrantable assertion, now so common, that this provision was originally of vital importance to the peace and harmony of the country.

[1] Annals of Congress, House and Senate Journals, 15th Cong. 1st Sess.

At last, in 1850, we have another Act, passed by both Houses of Congress, and approved by the President, familiarly known as the Fugitive Slave Bill. As I read this statute, I am filled with painful emotions. The masterly subtlety with which it is drawn might challenge admiration, if exerted for a benevolent purpose; but in an age of sensibility and refinement, a machine of torture, however skilful and apt, cannot be regarded without horror. Sir, in the name of the Constitution, which it violates, of my country, which it dishonors, of Humanity, which it degrades, of Christianity, which it offends, I arraign this enactment, and now hold it up to the judgment of the Senate and the world. Again, I shrink from no responsibility. I may seem to stand alone; but all the patriots and martyrs of history, all the Fathers of the Republic, are with me. Sir, there is no attribute of God which does not take part against this Act.

But I am to regard it now chiefly as an infringement of the Constitution. Here its outrages, flagrant as manifold, assume the deepest dye and broadest character only when we consider that by its language it is not restricted to any special race or class, to the African or to the person with African blood, but that any inhabitant of the United States, of whatever complexion or condition, may be its victim. Without discrimination of color even, and in violation of every presumption of freedom, the Act surrenders all who may be claimed as "owing service or labor" to the same tyrannical proceeding. If there be any whose sympathies are not moved for the slave, who do not cherish the rights of the humble African, struggling for divine Freedom, as warmly as the rights of the white man, let him con-

sider well that the rights of all are equally assailed. "Nephew," said Algernon Sidney in prison, on the night before his execution, "I value not my own life a chip; but what concerns me is, that *the law* which takes away my life may hang every one of you, whenever it is thought convenient."

Whilst thus comprehensive in its provisions, and applicable to all, there is no safeguard of Human Freedom which the monster Act does not set at nought.

It commits this great question — than which none is more sacred in the law — not to a solemn trial, but to summary proceedings.

It commits this great question, not to one of the high tribunals of the land, but to the unaided judgment of a single petty magistrate.

It commits this great question to a magistrate appointed, not by the President with the consent of the Senate, but by the Court, — holding office, not during good behavior, but merely during the will of the Court, — and receiving, not a regular salary, but fees according to each individual case.

It authorizes judgment on *ex parte* evidence, by affidavit, without the sanction of cross-examination.

It denies the writ of Habeas Corpus, ever known as the Palladium of the citizen.

Contrary to the declared purposes of the framers of the Constitution, it sends the fugitive back "at the public expense."

Adding meanness to violation of the Constitution, it bribes the Commissioner by a double stipend to pronounce against Freedom. If he dooms a man to Slavery, the reward is ten dollars; but saving him to Freedom, his dole is five.

The Constitution expressly secures the "free exercise of religion": but this Act visits with unrelenting penalties the faithful men and women who render to the fugitive that countenance, succor, and shelter which in their conscience "religion" requires; and thus is practical religion directly assailed. Plain commandments are broken; and are we not told that "whosoever shall break one of these least commandments, and shall teach men so, he shall be called the least in the kingdom of Heaven"?[1]

As it is for the public weal that there should be an end of suits, so by the consent of civilized nations these must be instituted within fixed limitations of time; but this Act, exalting Slavery above even this practical principle of universal justice, ordains proceedings against Freedom without any reference to the lapse of time.

Glancing only at these points, and not stopping for argument, vindication, or illustration, I come at once upon two chief radical objections to this Act, identical in principle with those triumphantly urged by our fathers against the British Stamp Act: *first*, that it is a usurpation by Congress of powers not granted by the Constitution, and an infraction of rights secured to the States; and, *secondly*, that it takes away Trial by Jury in a question of Personal Liberty and a suit at Common Law. Either of these objections, if sustained, strikes at the very root of the Act. That it is obnoxious to both is beyond doubt.

Here, at this stage, I encounter the difficulty, that these objections are already foreclosed by legislation of

[1] Matt. v. 19.

Congress and decisions of the Supreme Court, — that as early as 1793 Congress assumed power over this subject by an Act which failed to secure Trial by Jury, and that the validity of this Act under the Constitution has been affirmed by the Supreme Court. On examination, this difficulty will disappear.

The Act of 1793 proceeded from a Congress that had already recognized the United States Bank, chartered by a previous Congress, which, though sanctioned by the Supreme Court, has been since in high quarters pronounced unconstitutional. If it erred as to the Bank, it may have erred also as to fugitives from service. But the Act itself contains a capital error on this very subject, so declared by the Supreme Court, in pretending to vest a portion of the judicial power of the Nation in State officers. This error takes from the Act all authority as an interpretation of the Constitution. I dismiss it.

The decisions of the Supreme Court are entitled to great consideration, and will not be mentioned by me except with respect. Among the memories of my youth are happy days when I sat at the feet of this tribunal, while MARSHALL presided, with STORY by his side. The pressure now proceeds from the case of *Prigg* v. *Pennsylvania* (16 Peters, 539), where is asserted the power of Congress. Without going into minute criticism of this judgment, or considering the extent to which it is extra-judicial, and therefore of no binding force, — all which has been done at the bar in one State, and by an able court in another, — but conceding to it a certain degree of weight as a rule to the judiciary on this particular point, still it does not touch the grave question which springs from the denial of Trial by Jury. This

judgment was pronounced by Mr. Justice Story. From the interesting biography of the great jurist, recently published by his son, we learn that the question of Trial by Jury was not considered as before the Court; so that, in the estimation of the learned judge himself, it was still an open question. Here are the words.

"One prevailing opinion, which has created great prejudice against this judgment, is, that it denies the right of a person claimed as a fugitive from service or labor to a trial by jury. This mistake arises from supposing the case to involve the general question as to the constitutionality of the Act of 1793. But in fact no such question was in the case; and the argument, that the Act of 1793 was unconstitutional, because it did not provide for a trial by jury according to the requisitions of the sixth article in the Amendments to the Constitution, having been suggested to my father on his return from Washington, he replied, that this question was not argued by counsel nor considered by the Court, and that he should still consider it an open one."[1]

But whatever may be the influence of this judgment as a rule to the judiciary, it cannot arrest our duty as legislators. And here I adopt with entire assent the language of President Jackson, in his memorable Veto, in 1832, of the Bank of the United States. To his course was opposed the authority of the Supreme Court, and this is his reply.

"If the opinion of the Supreme Court cover the whole ground of this Act, it ought not to control the coördinate authorities of this Government. The Congress, the Executive, and the Court must each for itself be guided by its own opinion of the Constitution. *Each public officer who takes an oath to support the Constitution swears that he will support it*

[1] Life and Letters of Joseph Story, edited by his Son, Vol. II. p. 396.

as he understands it, and not as it is understood by others. It is as much the duty of the House of Representatives, of the Senate, and of the President, to decide upon the constitutionality of any bill or resolution which may be presented to them for passage or approval, as it is of the Supreme Judges, when it may be brought before them for judicial decision. . . . . The authority of the Supreme Court must not, therefore, be permitted to control the Congress or the Executive, when acting in their legislative capacities, but to have only such influence as the force of their reasoning may deserve."[1]

With these authoritative words I dismiss this topic. The early legislation of Congress and the decisions of the Supreme Court cannot stand in our way. I advance to the argument.

(1.) *First, of the power of Congress over this subject.*

The Constitution contains *powers* granted to Congress, *compacts* between the States, and *prohibitions* addressed to the Nation and to the States. A compact or prohibition may be accompanied by a power, — but not necessarily, for it is essentially distinct in nature. And here the single question arises, Whether the Constitution, by grant, general or special, confers upon Congress any *power* to legislate on the subject of fugitives from service.

The whole legislative power of Congress is derived from two distinct sources: first, from the general grant, attached to the long catalogue of powers, "to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government

[1] Senate Journal, 22d Cong. 1st Sess., pp. 438, 439.

of the United States, or in any department or officer thereof"; and, secondly, from special grants in other parts of the Constitution. As the provision in question does not appear in the catalogue of powers, and does not purport to vest any power in the Government of the United States, or in any department or officer thereof, no power to legislate on this subject can be derived from the general grant. Nor can any such power be derived from any special grant in any other part of the Constitution; for none such exists. The conclusion must be, that no power is delegated to Congress over the surrender of fugitives from service.

In all contemporary discussions and comments, the Constitution was constantly justified and recommended on the ground that the powers not given to the Government were withheld. If under its original provisions any doubt on this head could have existed, it was removed, so far as language could remove it, by the Tenth Amendment, which, as we have already seen, expressly declares, that "the powers *not delegated* to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." Here, on the simple text of the Constitution, I might leave this question. But its importance justifies more extended examination, in twofold light: *first*, in the history of the Convention, revealing the unmistakable intention of its members; and, *secondly*, in the true principles of our Political System, by which the powers of the Nation and of the States are respectively guarded.

Look first at the *history of the Convention.* The articles of the old Confederation, adopted by the Continental Congress 15th November, 1777, though containing

no reference to fugitives from service, had provisions substantially like those in our present Constitution, touching the privileges of citizens in the several States, the surrender of fugitives from justice, and the credit due to the public records of States. But, since the Confederation had no powers not "expressly delegated," and as no power was delegated to legislate on these matters, they were nothing more than articles of treaty or compact. Afterwards, at the National Convention, these three provisions found place in the first reported draft of a Constitution, and were arranged in the very order which they occupied in the Articles of Confederation. *The clause relating to public records stood last.* Mark this fact.

When this clause, being in form merely a *compact*, came up for consideration in the Convention, various efforts were made to graft upon it a *power*. This was on the very day of the adoption of the clause relating to fugitives from service. Charles Pinckney moved to commit it, with a proposition for a *power* to establish uniform laws on the subject of bankruptcy and foreign bills of exchange. Mr. Madison was in favor of a *power* for the execution of judgments in other States. Gouverneur Morris, on the same day, moved to commit a further proposition for a *power* "to determine the proof and effect of such acts, records, and proceedings." Amidst all these efforts to associate a power with this compact, it is clear that nobody supposed that any such already existed. This narrative places the views of the Convention beyond question.

The compact regarding public records, together with these various propositions, was referred to a committee, on which were Mr. Randolph and Mr. Wilson, with

John Rutledge, of South Carolina, as chairman. After several days, they reported the compact, with a *power* in Congress to prescribe by general laws the manner in which such records shall be proved. A discussion ensued, in which Mr. Randolph complained that the "definition of the powers of the Government was so loose as to give it opportunities of usurping all the State powers. *He was for not going further than the Report, which enables the Legislature to provide for the effect of judgments.*"[1] The clause of compact with the power attached was then adopted, and is now part of the Constitution. In presence of this solicitude for the preservation of "State powers," even while considering a proposition for an express power, and also of the distinct statement of Mr. Randolph, that he "was for not going further than the Report," it is evident that the idea could not then have occurred, that a power was coupled with the naked clause of compact on fugitives from service.

At a later day the various clauses and articles severally adopted from time to time in Convention were referred to a committee of revision and arrangement, that they might be reduced to form as a connected whole. *Here another change was made.* The clause relating to public records, with the power attached, was taken from its original place at the bottom of the clauses of compact, and promoted to stand first in the article, as a distinct section, while the other clauses of compact concerning citizens, fugitives from justice, and fugitives from service, each and all without any power attached, by a natural association compose but a single section, thus: —

[1] Madison's Debates, Sept. 3, 1787.

"ARTICLE IV.

"SECTION 1. Full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State. *And the Congress may by general laws prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof.*

"SECTION 2. The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States.

"A person charged in any State with treason, felony, or other crime, who shall flee from justice, and be found in another State, shall, on demand of the Executive authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the crime.

"No person held to service or labor in one State, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due.

"SECTION 3. New States *may be admitted by the Congress* into this Union; but no new State shall be formed or erected within the jurisdiction of any other State, nor any State be formed by the junction of two or more States or parts of States, without the consent of the Legislatures of the States concerned, *as well as of the Congress.*

"*The Congress shall have power* to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or of any particular State.

"SECTION 4. *The United States shall guaranty* to every State in this Union a republican form of Government, and *shall protect* each of them against invasion, and, on application of the Legislature, or of the Executive (when the Legislature cannot be convened), against domestic violence."

Here is the whole article, in its final form. It will be observed that the third section, immediately following the triad section of compacts, contains two specific powers, — one with regard to new States, and the other with regard to the public Territory. These are naturally grouped together, while the fourth section of this same article, which is distinct in character, is placed by itself. In the absence of all specific information, reason alone can determine why this arrangement was made. But the conclusion is obvious, that, in the view of the Committee and of the Convention, each of these sections differs from the others. The first contains a compact with a grant of power. The second contains provisions, all of which are simple compacts, and two of which were confessedly simple compacts in the old Articles of Confederation, from which, unchanged in character, they were borrowed. The third is a twofold grant of power to Congress, without any compact. The fourth is neither power nor compact merely, nor both united, but a solemn injunction upon the National Government to perform an important duty.

The framers of the Constitution were wise and careful, having a reason for what they did, and understanding the language they employed. They did not, after discussion, incorporate into their work any superfluous provision; nor did they without design adopt the peculiar arrangement in which it appears. Adding to the record compact an express grant of power, they testified not only their desire for such power in Congress, but their conviction that without such express grant it would not exist. But if express grant was necessary in this case, it was equally necessary in all the other cases. *Expressum facit cessare tacitum.* Especially, in view of

its odious character, was it necessary in the case of fugitives from service. Abstaining from any such grant, and then grouping the bare compact with other similar compacts, separate from every grant of power, they testified their purpose most significantly. Not only do they decline all addition to the compact of any such power, but, to render misapprehension impossible, to make assurance doubly sure, to exclude any contrary conclusion, they punctiliously arrange the clauses, on the principle of *noscitur a sociis*, so as to distinguish all the grants of power, but especially to make the new grant of power, in the case of public records, stand forth in the front by itself, severed from the naked compacts with which it was originally associated.

Thus the proceedings of the Convention show that the founders understood the necessity of *powers* in certain cases, and, on consideration, jealously granted them. A closing example will strengthen the argument. Congress is expressly empowered "*to establish an uniform rule of* Naturalization, and *uniform laws* on the subject of Bankruptcies, *throughout the United States.*" Without this provision these two subjects would have fallen within the control of the States, leaving the Nation powerless *to establish a uniform rule* thereupon. Now, instead of the existing compact on fugitives from service, it would have been easy, had any such desire prevailed, to add this case to the clause on Naturalization and Bankruptcies, and to empower Congress TO ESTABLISH A UNIFORM RULE FOR THE SURRENDER OF FUGITIVES FROM SERVICE THROUGHOUT THE UNITED STATES. Then, of course, whenever Congress undertook to exercise the power, all State control of the subject would be superseded. The National Government would have

been constituted, like Nimrod, the mighty Hunter, with power to gather the huntsmen, to halloo the pack, and to direct the chase of men, ranging at will, without regard to boundaries or jurisdictions, throughout all the States. But no person in the Convention, not one of the reckless partisans of Slavery, was so audacious as to make this proposition. Had it been distinctly made, it would have been as distinctly denied.

The fact that the provision on this subject was adopted *unanimously*, while showing the little importance attached to it *in the shape it finally assumed*, testifies also that it could not have been regarded *as a source of National power for Slavery*. It will be remembered that among the members of the Convention were Gouverneur Morris, who had said that he "NEVER would concur in upholding domestic slavery,"—Elbridge Gerry, who thought we "ought to be careful NOT *to give any sanction to it*,"—Roger Sherman, who "was OPPOSED to a tax on slaves imported, *because it implied they were property*,"—James Madison, who "thought it WRONG to admit in the Constitution the idea that there could be property in men,"—and Benjamin Franklin, who likened American slaveholders to Algerine corsairs. In the face of these unequivocal judgments, it is absurd to suppose that these eminent citizens consented *unanimously* to any provision by which the National Government, the creature of their hands, dedicated to Freedom, could become the most offensive agent of Slavery.

Thus much for the evidence from the history of the Convention. But the *true principles of our Political System* are in harmony with this conclusion of history; and here let me say a word of State Rights.

It was the purpose of our fathers to create a National Government, and to endow it with adequate powers. They had known the perils of imbecility, discord, and confusion, protracted through the uncertain days of the Confederation, and they desired a government which should be a true bond of Union and an efficient organ of national interests at home and abroad. But while fashioning this agency, they fully recognized the governments of the States. To the Nation were delegated high powers, essential to the national interests, but specific in character and limited in number. To the States and to the people were reserved the powers, general in character and unlimited in number, not delegated to the Nation or prohibited to the States.

The integrity of our Political System depends upon harmony in the operations of the Nation and of the States. While the Nation within its wide orbit is supreme, the States move with equal supremacy in their own. But, from the necessity of the case, the supremacy of each in its proper place excludes the other. The Nation cannot exercise rights reserved to the States, nor can the States interfere with the powers of the Nation. Any such action on either side is a usurpation. These principles were distinctly declared by Mr. Jefferson in 1798, in words often adopted since, and which must find acceptance from all parties.

"That the several States composing the United States of America are not united on the principle of unlimited submission to their General Government; but that by a compact, under the style and title of a Constitution for the United States and of Amendments thereto, they constituted a General Government for special purposes, *delegated to that Government certain definite powers*, reserving, each State to

itself, the residuary mass of right to their own self-government; and that *whensoever the General Government assumes undelegated powers, its acts are unauthoritative, void, and of no force.*" [1]

I have already amply shown to-day that Slavery is in no respect national, — that it is not within the sphere of national activity, — that it has no "positive" support in the Constitution, — and that any interpretation inconsistent with this principle would be abhorrent to the sentiments of its founders. Slavery is a local institution, peculiar to the States, and under the guardianship of State Rights. It is impossible, without violence to the spirit and letter of the Constitution, to claim for Congress any power to legislate either for its abolition in the States or its support anywhere. *Non-Intervention* is the rule prescribed to the Nation. Regarding the question in its more general aspects only, and putting aside, for the moment, the perfect evidence from the records of the Convention, it is palpable that there is no *national fountain* out of which the existing Slave Act can possibly spring.

But this Act is not only an unwarrantable assumption of power by the Nation, it is also an infraction of rights reserved to the States. Everywhere within their borders the States are the peculiar guardians of *personal liberty.* By Jury and Habeas Corpus to save the citizen harmless against all assault is among their duties and rights. To his State the citizen, when oppressed, may appeal; nor should he find that appeal denied. But this Act despoils him of rights, and despoils his State of all power to protect him. It subjects him to the wretched

[1] Kentucky Resolutions of 1798: Jefferson's Writings, Vol. IX. p. 464. See also Elliot's Debates, Vol. IV., Appendix, p. 380.

chance of false oaths, forged papers, and facile commissioners, and takes from him every safeguard. Now, if the slaveholder has a right to be secure *at home* in the enjoyment of *Slavery*, so also has the freeman of the North — and every person there is presumed to be a freeman — an equal right to be secure *at home* in the enjoyment of *Freedom*. The same principle of State Rights by which Slavery is protected in the Slave States throws an impenetrable shield over Freedom in the Free States. And here, let me say, is the only security for Slavery in the Slave States, as for Freedom in the Free States. In the present fatal overthrow of State Rights you teach a lesson which may return to plague the teacher. Compelling the National Government to stretch its Briarean arms into the Free States for the sake of Slavery, you show openly how it may stretch these same hundred giant arms into the Slave States for the sake of Freedom. This lesson was not taught by our fathers.

Here I end this branch of the question. The true principles of our Political System, the history of the National Convention, the natural interpretation of the Constitution, all teach that this Act is a usurpation by Congress of powers that do not belong to it, and an infraction of rights secured to the States. It is a sword, whose handle is at the National Capital, and whose point is everywhere in the States. A weapon so terrible to Personal Liberty the Nation has no power to grasp.

(2.) *And now of the denial of Trial by Jury.*

Admitting, for the moment, that Congress is intrusted with power over this subject, which truth disowns, still

the Act is again radically unconstitutional from its denial of Trial by Jury in a question of Personal Liberty and a suit at Common Law. Since on the one side there is a claim of property, and on the other of liberty, both property and liberty are involved in the issue. To this claim on either side is attached Trial by Jury.

To me, Sir, regarding this matter in the light of the Common Law and in the blaze of free institutions, it has always seemed impossible to arrive at any other conclusion. If the language of the Constitution were open to doubt, which it is not, still all the presumptions of law, all the leanings to Freedom, all the suggestions of justice, plead angel-tongued for this right. Nobody doubts that Congress, if it legislates on this matter, *may* allow a Trial by Jury. But if it *may*, so overwhelming is the claim of justice, it MUST. Beyond this, however, the question is determined by the precise letter of the Constitution.

Several expressions in the provision for the surrender of fugitives from service show the essential character of the proceedings. In the first place, the person must be, not merely *charged*, as in the case of fugitives from justice, but actually *held to service* in the State from which he escaped. In the second place, he must "be delivered up on claim of the party to whom such service or labor may be *due*." These two facts, that he was *held* to service, and that his service was *due* to his claimant, are directly placed in issue, and must be proved. Two necessary incidents of the delivery may also be observed. First, it is made in the State where the fugitive is found; and, secondly, it restores to the claimant complete control over the person of the fugi-

tive. From these circumstances it is evident that the proceedings cannot be regarded, in any just sense, as preliminary, or ancillary to some future formal trial, but as complete in themselves, final and conclusive.

These proceedings determine on the one side the question of Property, and on the other the sacred question of Personal Liberty in its most transcendent form, — Liberty not merely for a day or a year, but for life, and the Liberty of generations that shall come after, so long as Slavery endures. To these questions the Constitution, by two specific provisions, attaches Trial by Jury. One is the familiar clause, already adduced: "No *person* shall be deprived of life, *liberty*, or property, *without due process of law*," — that is, without due proceeding at law, with Trial by Jury. Not stopping to dwell on this, I press at once to the other provision, which is still more express: "In suits at Common Law, where the value in controversy shall exceed twenty dollars, the right of Trial by Jury shall be preserved." This clause, which does not appear in the Constitution as first adopted, was suggested by the very spirit of Freedom. At the close of the National Convention, Elbridge Gerry refused to sign the Constitution because, among other things, it established "a tribunal *without juries*, a Star Chamber as to civil cases."[1] Many united in his opposition, and on the recommendation of the First Congress this additional safeguard was adopted as an amendment.

Now, regarding the question as one of Property, or of Personal Liberty, in either alternative the Trial by Jury is secured. For this position authority is ample. In the debate on the Fugitive Slave Bill of 1817–18, a

[1] Madison's Debates, Sept. 15, 1787.

Senator from South Carolina, Mr. Smith, anxious for the asserted right of property, objected, on this very floor, to a reference of the question, under the writ of Habeas Corpus, to a judge without a jury. Speaking solely for Property, these were his words.

"This would give a judge the sole power of deciding *the right of property the master claims in his slave, instead of trying that right by a jury, as prescribed by the Constitution.* He would be judge of matters of law and matters of fact, clothed with all the powers of a jury as well as the powers of a court. Such a principle is unknown in your system of jurisprudence. *Your Constitution has forbid it.* It preserves the right of Trial by Jury in all cases where the value in controversy exceeds twenty dollars." [1]

But this provision has been repeatedly discussed by the Supreme Court, so that its meaning is not open to doubt. Three conditions are necessary: *first*, the proceeding must be "a suit"; *secondly*, "at Common Law"; and, *thirdly*, "where the value in controversy exceeds twenty dollars." In every such case "the right of Trial by Jury *shall* be preserved." Judgments of the Supreme Court cover each of these points.

First. In the case of *Cohens* v. *Virginia* (6 Wheaton, 407), the Court say: "What is a *suit?* We understand it to be the prosecution or pursuit of some *claim*, demand, or request." Of course, then, the "claim" for a fugitive must be a "suit."

Secondly. In the case of *Parsons* v. *Bedford et al.* (3 Peters, 447), while considering this very clause, the Court say: "By *Common Law* the framers of the Constitution meant . . . . not merely suits which the

[1] Annals of Congress, 15th Cong. 1st Sess., March 6, 1818, col. 232.

Common Law recognized among its old and settled proceedings, but suits in which *legal rights* were to be ascertained and determined. . . . . In a just sense, the Amendment may well be construed to embrace all suits which are not of Equity and Admiralty jurisdiction, *whatever may be the peculiar form which they may assume to settle legal rights.*" Now, since the claim for a fugitive is not a suit in Equity or Admiralty, but a suit to settle what are called legal rights, it must be a "suit at Common Law."

Thirdly. In the case of *Lee* v. *Lee* (8 Peters, 44), on a question whether "the value in controversy" was "one thousand dollars or upwards," it was objected, that the appellants, who were petitioners for Freedom, were not of the value of one thousand dollars. But the Court said: "The matter in dispute is the Freedom of the petitioners. . . . . *This is not susceptible of a pecuniary valuation.* . . . . . We entertain no doubt of the jurisdiction of the Court."[1] Of course, then, since Liberty is above price, the claim to any fugitive always and necessarily presumes that "the value in controversy exceeds twenty dollars."

By these successive steps, sustained by judgments of the highest tribunal, it appears, as in a diagram, that the right of Trial by Jury is secured to the fugitive from service.

This conclusion needs no additional authority; but it receives curious illustration from the ancient records

[1] The rule of the Roman law was explicit: *Neque humanum fuerit ob rei pecuniariæ quæstionem libertati moram fieri.* This is a text of Ulpian (Digestorum Lib. XL. Tit. V., *De Fideicommissariis Libertatibus*, 37). In the same spirit is the mediæval verse, —

"Non bene pro toto libertas venditur auro."

of the Common Law, so familiar and dear to the framers of the Constitution. It is said by Mr. Burke, in his magnificent speech on Conciliation with America, that "nearly as many of Blackstone's Commentaries were sold in America as in England,"[1] carrying thither the knowledge of those vital principles of Freedom which were the boast of the British Constitution. Thus imbued, the earliest Continental Congress, in 1774, declared, "That the respective Colonies are entitled to the Common Law of England, and more especially to the great and inestimable privilege of being tried by their Peers of the Vicinage, according to the course of that law."[2] Amidst the troubles which heralded the Revolution, the Common Law was claimed as a birthright.

Now, although the Common Law may not be approached as a source of jurisdiction under the National Constitution, — and on this interesting topic I forbear to dwell, — *it is clear that it may be employed to determine the meaning of technical terms in the Constitution borrowed from this law.* This, indeed, is expressly sanctioned by Mr. Madison, in his celebrated Report of 1799, while limiting the extent to which the Common Law may be employed. Thus by this law we learn the nature of *Trial by Jury,* which, though secured, is not described by the Constitution; also what are *Attainder, Habeas Corpus,* and *Impeachment,* all technical terms of the Constitution, borrowed from the Common Law. By this law, and its associate Chancery, we learn what are *cases in law and equity* to which the judicial power of

[1] Works (ed. 1801), Vol. III. p. 55.

[2] Declaration of Rights, October 14, 1774: Journals of Congress, Vol. I. p. 29.

the United States is extended. These instances I adduce merely for example. Also in the same way we learn what are *suits at Common Law.*

Now, on principle and authority, *a claim for the delivery of a fugitive slave is a suit at Common Law,* and is embraced naturally and necessarily in this class of judicial proceedings. This proposition can be placed beyond question. And here, especially, let me ask the attention of all learned in the law. On this point, as on every other in this argument, I challenge inquiry and answer.

History painfully records, that, during the early days of the Common Law, and down even to a late period, a system of Slavery existed in England, known under the name of *villenage.* The slave was generally called a *villein,* though in the original Latin forms of judicial proceedings he was termed *nativus,* implying slavery by birth. The incidents of this condition are minutely described, and also the mutual remedies of master and slave, all of which were regulated by the Common Law. Slaves sometimes then, as now, *escaped* from their masters. The claim for them, after such *escape,* was prosecuted by a "suit at Common Law," to which, as to every suit at Common Law, Trial by Jury was necessarily attached. Blackstone, in his Commentaries, in words which must have been known to all the lawyers of the Convention, said of *villeins:* "They could not leave their lord without his permission; *but if they ran away,* or were purloined from him, *might be* CLAIMED *and recovered by* ACTION, *like beasts or other chattels.*"[1] This very word, "action," of itself implies "a suit at Common Law" with Trial by Jury.

[1] Commentaries, Vol. II. p. 93.

From other sources we learn precisely what the *action* was. That great expounder of the ancient law, Mr. Hargrave, says, "Our Year Books and Books of Entries are full of the forms used in pleading a title to villeins regardant."[1] Though no longer of practical value in England, they remain as monuments of jurisprudence, and as mementos of a barbarous institution. He thus describes the remedy of the master at Common Law.

"The lord's remedy for a *fugitive villein* was either by seizure or by suing out a writ of *Nativo Habendo*, or Neifty, as it is sometimes called. If the lord seized, the villein's most effectual mode of recovering liberty was by the writ of *Homine Replegiando*, which had great advantage over the writ of *Habeas Corpus*. In the *Habeas Corpus* the return cannot be contested by pleading against the truth of it, and consequently on a *Habeas Corpus the question of liberty cannot go to a jury for trial*. . . . . But in the *Homine Replegiando* it was otherwise. . . . . The plaintiff, ... on the defendant's pleading the villenage, had the same opportunity of contesting it as when impleaded by the lord in a *Nativo Habendo*. If the lord sued out a *Nativo Habendo*, and the villenage was denied, in which case the sheriff could not seize the villein, *the lord was then to enter his plaint in the county court;* and as the sheriff was not allowed to try the question of villenage in his court, the lord could not have any benefit from the writ, without removing the cause by the writ of *Pone* into the King's Bench or Common Pleas."[2]

The authority of Mr. Hargrave is sufficient. But I mean to place this matter beyond all cavil. From the Digest of Lord Chief Baron Comyns, which at the

[1] Argument in Sommersett's Case: Howell's State Trials, XX. 42.
[2] Ibid., 38, 39, note.

adoption of the Constitution was among the classics of our jurisprudence, I derive another description of the remedy.

"If the lord claims an inheritance in his villein, *who flies from his lord against his will*, and lives in a place out of the manor to which he is regardant, the lord shall have a *Nativo Habendo*. And upon such writ, directed to the sheriff, he may seize him who does not deny himself to be a villein. But if the defendant say that he is a freeman, the sheriff cannot seize him, but the lord must remove the writ by *Pone* before the Justices in Eyre, or in C. B., *where he must count upon it.*"[1]

An early writer of peculiar authority, Fitzherbert, in his *Natura Brevium*, on the writs of the Common Law, thus describes these proceedings.

"The writ *de Nativo Habendo* lieth for the lord who claimeth inheritance in any villein, *when his villein is run from him*, and is remaining within any place out of the manor unto which he is regardant, or when he departeth from his lord against the lord's will: and the writ shall be directed unto the sheriff. . . . . And the sheriff may seize the villein, and deliver him unto his lord, if the villein confess unto the sheriff that he is his villein; but if the villein say to the sheriff that he is frank, then it seemeth that the sheriff ought not to seize him: as it is in a replevin, if the defendant claim property, the sheriff cannot replevy the cattle, but the party ought to sue a writ *de Proprietate Probanda:* and so if the villein say that he is a freeman, &c., then the sheriff ought not to seize him, but then the lord ought to sue a *Pone* to remove the plea before the Justices in the Common Pleas, or before the Justices in Eyre. But if the villein purchase a writ *de Libertate Probanda* before the lord

[1] Comyns's Digest: Remedy for a Villein, (C. 1,) *Nativo Habendo.*

hath sued the *Pone* to remove the plea before the Justices, then that writ of *Libertate Probanda* is a *Supersedeas* unto the lord, that he proceed not upon the writ of *Nativo Habendo* till the Eyre of the Justices, or till the day of the plea be adjourned before the Justices, and that the lord ought not to seize the villein in the mean time."[1]

These authorities are not merely applicable to the general question of freedom, but they distinctly contemplate the case of *fugitive* slaves, and the "suits at Common Law" for their rendition. Blackstone speaks of villeins who "ran away"; Hargrave of "fugitive villeins"; Comyns of a villein "who flies from his lord against his will"; and Fitzherbert of the proceedings of the lord "when his villein is run from him." The forms, writs, counts, pleadings, and judgments in these suits are all preserved among the precedents of the Common Law. The writs are known as original writs, which the party on either side, at the proper stage, could sue out of right without showing cause. The writ of *Libertate Probanda* for a fugitive slave was in this form:—

"LIBERTATE PROBANDA.

"The king to the sheriff, &c. A. and B. her sister have showed unto us, that, whereas they are free women, and ready to prove their liberty, F., claiming them to be his neifs unjustly, vexes them; and therefore we command you, that, if the aforesaid A. and B. shall make you secure touching the proving of their liberty, then put that plea before our justices at the first assizes, when they shall come into those parts, because proof of this kind belongeth not to you to take; and in the mean time cause the said A. and B. to have peace thereupon, and tell the aforesaid F. that he may

[1] Fitzherbert, Natura Brevium, Vol. I. p. 77.

be there, if he will, to prosecute his plea thereof against the aforesaid A. and B. And have there this writ. Witness, &c." [1]

By these various proceedings, all ending in Trial by Jury, Personal Liberty was guarded, even in the unrefined and barbarous days of the early Common Law. Any person claimed as a fugitive slave might invoke this Trial as a sacred right. Whether the master proceeded by seizure, as he might, or by legal process, Trial by Jury, in a suit at Common Law, before one of the high courts of the realm, was equally secured. In the case of seizure, the fugitive, reversing the proceedings, might institute process against his master, and appeal to a Court and Jury. In the case of process by the master, the watchful law secured to the fugitive the same protection. By no urgency of force, by no device of process, could any person claimed as a slave be defrauded of this Trial. Such was the Common Law. If its early boast, that there could be no slaves in England, fails to be true, this at least may be its pride, — that, according to its indisputable principles, the liberty of every man was placed under the guard of Trial by Jury.

These things may seem new to us; but they must have been known to the members of the Convention, particularly to those from South Carolina, through whose influence the provision on this subject was adopted. Charles Cotesworth Pinckney and Mr. Rutledge had studied law at the Temple, one of the English Inns of Court. It would be a discredit to them, and also to other learned lawyers, members of the Convention, to suppose that they were not conversant with the principles and precedents directly applicable to this subject, all of which are set down in works of acknowledged

[1] Fitzherbert, Vol. I. p. 77.

authority, and at that time of constant professional study. Only a short time before, in the case of Sommersett, they had been most elaborately examined in Westminster Hall. In a forensic effort of unsurpassed learning and elevation, which of itself vindicates for its author his great juridical name, Mr. Hargrave had fully made them known to such as were little acquainted with the more ancient sources. But even if we could suppose them unknown to the lawyers of the Convention, they are none the less applicable in determining the true meaning of the Constitution.

The conclusion is explicit. Clearly and indisputably, in England, the country of the Common Law, a claim for a fugitive slave was "a suit at Common Law," recognized "among its old and settled proceedings." To question this, in the face of authentic principles and precedents, is preposterous. As well might it be questioned, that a writ of replevin for a horse, or a writ of right for land, was "a suit at Common Law." It follows, then, that this *technical term* of the Constitution, read in the illumination of the Common Law, naturally and necessarily embraces proceedings for the recovery of fugitive slaves, *if any such be instituted or allowed under the Constitution.* And thus, by the letter of the Constitution, in harmony with the requirements of the Common Law, all such persons, when claimed by their masters, are entitled to Trial by Jury.

Such, Sir, is the argument, briefly uttered, against the constitutionality of the Slave Act. Much more I might say on this matter; much more on the two chief grounds of objection which I have occupied. But I am admonished to hasten on.

Opposing this Act as doubly unconstitutional from the want of power in Congress and from the denial of Trial by Jury, I find myself again encouraged by the example of our Revolutionary Fathers, in a case which is a landmark of history. The parallel is important and complete. In 1765, the British Parliament, by a notorious statute, attempted to draw money from the Colonies through a stamp tax, while the determination of certain questions of forfeiture under the statute was delegated, not to the Courts of Common Law, but to Courts of Admiralty without a jury. The Stamp Act, now execrated by all lovers of Liberty, had this extent and no more. Its passage was the signal for a general flame of opposition and indignation throughout the Colonies. It was denounced as contrary to the British Constitution, on two principal grounds: *first*, as a usurpation by Parliament of powers not belonging to it, and an infraction of rights secured to the Colonies; and, *secondly*, as a denial of Trial by Jury in certain cases of property.

The public feeling was variously expressed. At Boston, on the day the Act was to take effect, the shops were closed, the bells of the churches tolled, and the flags of the ships hung at half-mast. At Portsmouth, in New Hampshire, the bells were tolled, and the friends of Liberty were summoned to hold themselves in readiness for her funeral. At New York, the obnoxious Act, headed "Folly of England and Ruin of America," was contemptuously hawked about the streets. Bodies of patriots were organized everywhere under the name of "Sons of Liberty." The merchants, inspired then by Liberty, resolved to import no more goods from England until the repeal of the Act. The orators also spoke. James Otis with fiery tongue appealed to Magna Charta.

Of all the States, Virginia — whose shield bears the image of Liberty trampling upon chains — first declared herself by solemn resolutions, which the timid thought "treasonable," [1] but which soon found response. New York followed. Massachusetts came next, speaking by the pen of the inflexible Samuel Adams. In an Address from the Legislature to the Governor, the true grounds of opposition to the Stamp Act, coincident with the two radical objections to the Slave Act, are clearly set forth.

"You are pleased to say that the Stamp Act is an Act of Parliament, and as such ought to be observed. This House, Sir, has too great a reverence for the Supreme Legislature of the nation *to question its just authority.* It by no means appertains to us to presume to adjust the boundaries of the *power* of Parliament; *but boundaries there undoubtedly are.* We hope we may without offence put your Excellency in mind of that most grievous sentence of excommunication solemnly denounced by the Church in the name of the Sacred Trinity, in the presence of King Henry the Third and the estates of the realm, *against all those who should make statutes,* OR OBSERVE THEM, BEING MADE, *contrary to the liberties of Magna Charta.* . . . . The Charter of this Province invests the General Assembly with the *power* of making laws for its internal government and taxation; and this Charter has never yet been forfeited. The Parliament has a right to make all laws within the limits of their own constitution. . . . . The people complain that the Act invests a single judge of the Admiralty with a power to try and determine their property, in controversies arising from internal concerns, *without a jury,* contrary to the very expression of Magna Charta, that no freeman shall be amerced but by the oath of good and lawful men of the vicinage. . . . . We deeply regret it that

[1] Hutchinson, History of Massachusetts, Vol. III. p. 119.

the Parliament has seen fit to pass such an act as the Stamp Act; we flatter ourselves that the hardships of it will shortly appear to them in such a point of light as shall induce them, in their wisdom, to repeal it; *in the mean time we must beg your Excellency to excuse us from doing anything to assist in the execution of it.*"[1]

Thus in those days spoke Massachusetts. The parallel still proceeds. The unconstitutional Stamp Act was welcomed in the Colonies by the Tories of that day precisely as the unconstitutional Slave Act is welcomed by large and imperious numbers among us. Hutchinson, at that time Lieutenant-Governor and Chief-Justice of Massachusetts, wrote to Ministers in England: "The Stamp Act is received among us with as much decency as could be expected. It leaves no room for evasion, and will execute itself."[2] Like the Judges of our day, in charges to grand juries, he resolutely vindicated the Act, and admonished "the jurors and people" to obey.[3] Like Governors of our day, Bernard, in his speech to the Legislature of Massachusetts, demanded unreasoning submission. "I shall not," says this British Governor, "enter into any disquisition of the policy of the Act. . . . . I have only to say that it is an Act of the Parliament of Great Britain; . . . . and I trust that the supremacy of that Parliament over all the members of their wide and diffused empire never was and never will be denied within these walls."[4] The military were against the people. A British major of artillery at New York ex-

[1] Journal of the House of Representatives of Massachusetts Bay, October 24, 1765, pp. 131–138. Hutchinson, Vol. III., Appendix, pp. 472–474.

[2] Bancroft, History of the United States, Vol. V. p. 272.

[3] Ibid.

[4] Journal of the House of Representatives, September 25, 1765, p. 119. Hutchinson, Vol. III., Appendix, pp. 467, 468.

claimed, in tones not unlike those now heard, "I will cram the stamps down their throats with the end of my sword!"[1] The elaborate answer of Massachusetts, a paper of historic grandeur, drawn by Samuel Adams, was pronounced "the ravings of a parcel of wild enthusiasts."[2]

Thus in those days spoke the partisans of the Stamp Act. But their weakness was soon manifest. In the face of an awakened community, where discussion has free scope, no men, though supported by office and wealth, can long maintain injustice. Earth, water, Nature they may subdue; but Truth they cannot subdue. Subtle and mighty against all efforts and devices, it fills every region of light with its majestic presence. The Stamp Act was discussed and understood. Its violation of constitutional rights was exposed. By resolutions of legislatures and of town meetings, by speeches and writings, by public assemblies and processions, the country was rallied in peaceful phalanx *against the execution of the Act.* To this great object, within the bounds of Law and the Constitution, were bent all the patriot energies of the land.

And here Boston took the lead. Her records at this time are full of proud memorials. In formal instructions to her representatives, adopted unanimously in Town Meeting at Faneuil Hall, "having been read several times, and put paragraph by paragraph," the following rule of conduct was prescribed.

"We therefore think it our indispensable duty, in justice to ourselves and posterity, as it is our undoubted privilege, in the most open and unreserved, but decent and respectful

[1] Bancroft, History of the United States, Vol. V. p. 332.
[2] Ibid., 349.

terms, to declare our greatest dissatisfaction with this law: *and we think it incumbent upon you by no means to join in any public measures for countenancing and assisting in the execution of the same,* but to use your best endeavors in the General Assembly to have the inherent, unalienable rights of the people of this Province asserted and vindicated, and left upon the public records, that posterity may never have reason to charge the present times with the guilt of tamely giving them away."[1]

Virginia responded to Boston. Many of her justices of the peace surrendered their commissions, rather than aid in the enforcement of the law, or be "instrumental in the destruction of their country's most essential rights and liberties."[2]

As the opposition deepened, there was a natural tendency to outbreak and violence. But this was carefully restrained. On one occasion, in Boston, it showed itself in the lawlessness of a mob. But the town, at a public meeting in Faneuil Hall, called without delay on the motion of the opponents of the Stamp Act, with James Otis as chairman, condemned the outrage. Eager in hostility to the execution of the Act, Boston cherished municipal order, and constantly discountenanced all tumult, violence, and illegal proceedings. Her equal devotion to these two objects drew the praises and congratulations of other towns. In reply, March 24, 1766, to an Address from the inhabitants of Plymouth, her own consciousness of duty done is thus expressed.

"If the inhabitants of this metropolis have taken *the warrantable and legal measures to prevent that misfortune, of all*

1 Town Records, MS., September 18; Boston Gazette, September 23, 1765.
2 Pennsylvania Gazette, October 31, 1765. Annual Register for 1765. p. [53.

others the most to be dreaded, the execution of the Stamp Act, and, as a necessary means of preventing it, have made any spirited applications for opening the custom-houses and courts of justice, — *if at the same time they have bore their testimony against outrageous tumults and illegal proceedings*, and given any example of the love of peace and good order, next to the consciousness of having done their duty is the satisfaction of meeting with the approbation of any of their fellow-countrymen."[1]

Learn now from the Diary of John Adams the results of this system.

"The year 1765 has been the most remarkable year of my life. That enormous engine, fabricated by the British Parliament, for battering down all the rights and liberties of America, — I mean the Stamp Act, — has raised and spread through the whole continent a spirit that will be recorded to our honor with all future generations. In every Colony, from Georgia to New Hampshire inclusively, the stamp distributors and inspectors have been compelled by the unconquerable rage of the people to renounce their offices. Such and so universal has been the resentment of the people, that every man who has dared to speak in favor of the stamps, or to soften the detestation in which they are held, how great soever his abilities and virtues had been esteemed before, or whatever his fortune, connections, and influence had been, has been seen to sink into universal contempt and ignominy."[2]

The Stamp Act became a dead letter. At the meeting of Parliament numerous petitions were presented, calling for its instant repeal. Franklin, at that time in England, while giving his famous testimony before the

[1] Town Records, MS., March 24; Boston Gazette, March 31, 1766.
[2] Diary, December 18, 1765: Works, Vol. II. p. 154.

House of Commons, was asked whether he thought the people of America would submit to this Act, if "moderated." His brief, emphatic response was: "No, never, unless compelled by force of arms."[1] Chatham, weak with disease, yet mighty in eloquence, exclaimed in ever memorable words: "The gentleman tells us, America is obstinate, America is almost in open rebellion. *Sir, I rejoice that America has resisted.* Three millions of people, so dead to all the feelings of liberty as voluntarily to submit to be slaves, would have been fit instruments to make slaves of the rest. . . . . The Americans have been wronged; they have been driven to madness by injustice. . . . . Upon the whole, I will beg leave to tell the House what is really my opinion. *It is, that the Stamp Act be repealed, absolutely, totally, and immediately.*"[2] It was repealed. Within less than a year from its original passage, denounced and discredited, it was driven from the Statute Book. In the charnel-house of history, with unclean things of the Past, it now rots. Thither the Slave Act must follow.

Sir, regarding the Stamp Act candidly and cautiously, free from animosities of the time, it is impossible not to see, that, though gravely unconstitutional, it was at most an infringement of *civil* liberty only, not of *personal* liberty. There was an unjust tax of a few pence, with the chance of amercement by a single judge without a jury; but by no provision of this Act was the *personal* liberty of any man assailed. No freeman could be seized under it as a slave. Such an Act, though justly obnoxious to every lover of Constitutional Liberty, cannot be viewed with the feelings of repugnance enkindled by a

[1] Hansard, Parliamentary History, January 28, 1766, Vol. XVI. col. 140.
[2] Ibid., January 14, 1766, Vol. XVI. 104–108.

statute which assails the personal liberty of every man, and under which any freeman may be seized as a slave. Sir, in placing the Stamp Act by the side of the Slave Act, I do injustice to that emanation of British tyranny. Both infringe important rights: one, of property; the other, the vital right of all, which is to other rights as soul to body, — *the right of a man to himself.* Both are condemned; but their relative condemnation must be measured by their relative characters. As Freedom is more than property, as Man is above the dollar that he earns, as heaven, to which we all aspire, is higher than earth, where every accumulation of wealth must ever remain, so are the rights assailed by an American Congress higher than those once assailed by the British Parliament. And just in this degree must history condemn the Slave Act more than the Stamp Act.

Sir, I might here stop. It is enough, in this place, and on this occasion, to show the unconstitutionality of this enactment. Your duty commences at once. All legislation hostile to the fundamental law of the land should be repealed without delay. But the argument is not yet exhausted. Even if this Act could claim any validity or apology under the Constitution, which it cannot, *it lacks that essential support in the Public Conscience of the States, where it is to be enforced, which is the life of all law, and without which any law must become a dead letter.*

The Senator from South Carolina (Mr. BUTLER) was right, when, at the beginning of the session, he pointedly said that a law which can be enforced only by the bayonet is no law.[1] Sir, it is idle to suppose that

[1] Speech on the Compromise Measures, December 15, 1851: Congressional Globe, Vol. XXIV. p. 93.

an Act of Congress becomes effective merely by compliance with the forms of legislation. Something more is necessary. The Act must be in harmony with the prevailing public sentiment of the community upon which it bears. I do not mean that the cordial support of every man or of every small locality is necessary; but I do mean that the public feelings, the public convictions, the public conscience, must not be touched, wounded, lacerated, by every endeavor to enforce it. With all these it must be so far in harmony, that, like the laws by which property, liberty, and life are guarded, it may be administered by the ordinary process of courts, without jeopardiug the public peace or shocking good men. If this be true as a general rule, if the public support and sympathy be essential to the life of all law, this is especially the case in an enactment which concerns the important and sensitive rights of Personal Liberty. In conformity with this principle, the Legislature of Massachusetts, in 1850, by formal resolution, declared with singular unanimity: —

"We hold it to be the duty of Congress to pass such laws only in regard thereto as will be sustained by the public sentiment of the Free States, where such laws are to be enforced."[1]

The duty of consulting these sentiments was recognized by Washington. While President of the United States, towards the close of his administration, he sought to recover a slave who had fled to New Hampshire. His autograph letter to Mr. Whipple, the Collector at Portsmouth, dated at Philadelphia, 28th November, 1796, which I now hold in my hand, and which

[1] Resolves concerning Slavery, May 1, 1850: Acts and Resolves, 1849–51, p. 519.

has never before seen the light, after describing the fugitive, and particularly expressing the desire of "her mistress," Mrs. Washington, for her return, employs the following decisive language: —

"I do not mean, however, by this request, that such violent measures should be used AS WOULD EXCITE A MOB OR RIOT, WHICH MIGHT BE THE CASE, IF SHE HAS ADHERENTS, OR EVEN UNEASY SENSATIONS IN THE MINDS OF WELL-DISPOSED CITIZENS. Rather than either of these should happen, I would forego her services altogether, — and the example, also, which is of infinite more importance.

"GEORGE WASHINGTON."

Mr. Whipple, in his reply, dated at Portsmouth, December 22, 1796, an autograph copy of which I have, recognizes the rule of Washington.

"I will now, Sir, agreeably to your desire, send her to Alexandria, *if it be practicable without the consequences which you except, — that of exciting a riot or a mob, or creating uneasy sensations in the minds of well-disposed persons.* The first cannot be calculated beforehand; it will be governed by the popular opinion of the moment, or the circumstances that may arise in the transaction. The latter may be sought into and judged of by conversing with such persons, without discovering the occasion. So far as I have had opportunity, I perceive that different sentiments are entertained on this subject."

The fugitive was never returned, but lived in freedom to a good old age, down to a very recent day, a monument of the just forbearance of him whom we aptly call Father of his Country. True, he sought her return. This we must regret, and find its apology. He was at the time a slaveholder. Often expressing himself with various degrees of force against Slavery,

and promising his suffrage for its abolition, he did not see this wrong as he saw it at the close of life, in the illumination of another sphere. From this act of Washington, still swayed by the policy of the world, I appeal to Washington writing his will. From Washington on earth I appeal to Washington in heaven. Seek not by his name to justify any such effort. His death is above his life. His last testament cancels his authority as a slaveholder. However he may have appeared before man, he came into the presence of God only as liberator of his slaves. Grateful for this example, I am grateful also, that, while slaveholder, and seeking the return of a fugitive, he has left in permanent record a rule of conduct which, if adopted by his country, will make Slave-Hunting impossible. The chances of riot, or mob, or "even uneasy sensations in the minds of well-disposed citizens," must prevent any such pursuit.[1]

Sir, the existing Slave Act cannot be enforced without violating the precept of Washington. Not merely "uneasy sensations of well-disposed citizens," but rage, tumult, commotion, mob, riot, violence, death, gush from its fatal overflowing fountains: —

> "Hoc fonte derivata clades
> In patriam populumque fluxit."[2]

Not a case occurs without endangering the public peace. Workmen are brutally dragged from employments to which they are wedded by years of successful labor; husbands are ravished from wives, and parents from

[1] The possibility of scandal and commotion was recognized by the great doctor of the Church, St. Thomas Aquinas, as proper to determine human conduct. According to him, an unjust law is not binding in conscience, *nisi forte propter vitandum scandalum vel turbationem. — Summa Theologica*, 1ma 2dæ, Quæst. XCVI. art. 4.

[2] Hor., Carm. III. vi. 19, 20.

children. Everywhere there is disturbance, — at Detroit, Buffalo, Harrisburg, Syracuse, Philadelphia, New York, Boston. At Buffalo the fugitive was cruelly knocked by a log of wood against a red-hot stove, and his mock trial commenced while the blood still oozed from his wounded head. At Syracuse he was rescued by a sudden mob; so also at Boston. At Harrisburg the fugitive was shot; at Christiana the Slave-Hunter was shot. At New York unprecedented excitement, always with uncertain consequences, has attended every case. Again at Boston a fugitive, according to received report, was first seized under base pretext that he was criminal; arrested only after deadly struggle; guarded by officers acting in violation of the State laws; tried in a court-house girdled by chains, contrary to the Common Law; finally surrendered to Slavery by trampling on the criminal process of the State, under an escort in violation again of the laws of the State, while the pulpits trembled, and the whole people, not merely "uneasy," but swelling with ill-suppressed indignation, though, for the sake of order and tranquillity, without violence, witnessed the shameful catastrophe.

Oppression by an individual is detestable; but oppression by law is worse. Hard and inscrutable, when the law, to which the citizen naturally looks for protection, becomes itself a standing peril. As the sword takes the place of the shield, despair settles down like a cloud. Montesquieu painted this most cruel tyranny, when he said that the man is drowned by the very plank on which he thought to escape.[1] And Moses exposes a kindred harshness, when, in commandment to the Israelites, he mysteriously enjoins, "Thou shalt not

[1] Grimm, Correspondance, Février, 1786, Tom. XIV. pp. 453, 454.

seethe a kid in its mother's milk."[1] Alas! every sacrifice under the form of law is only a repetition of this forbidden offence. The victim is the innocent kid, and the law is its mother's milk.

With every attempt to administer the Slave Act, it constantly becomes more revolting, particularly in its influence on the agents it enlists. Pitch cannot be touched without defilement, and all who lend themselves to this work seem at once and unconsciously to lose the better part of man. The spirit of the law passes into them, as the devils entered the swine. Upstart commissioners, mere mushrooms of courts, vie and revie with each other. Now by indecent speed, now by harshness of manner, now by denial of evidence, now by crippling the defence, and now by open, glaring wrong, they make the odious Act yet more odious. Clemency, grace, and justice die in its presence. All this is observed by the world. Not a case occurs which does not harrow the souls of good men, bringing tears of sympathy to the eyes, and those other noble tears which "patriots shed o'er dying laws."

Sir, I shall speak frankly. If there be an exception to this feeling, it will be found chiefly with a peculiar class. It is a sorry fact, that the "mercantile interest," in unpardonable selfishness, twice in English history, frowned upon endeavors to suppress the atrocity of Algerine Slavery, that it sought to baffle Wilberforce's great effort for the abolition of the African slave-trade, and that, by a sordid compromise, at the formation of our Constitution, it exempted the same detested, Heaven-defying traffic from American judgment. And now representatives of this "interest," forgetful that Commerce

[1] Deuteronomy, xiv. 21.

is born of Freedom, join in hunting the Slave. But the great heart of the people recoils from this enactment. It palpitates for the fugitive, and rejoices in his escape. Sir, I am telling you facts. The literature of the age is all on his side. Songs, more potent than laws, are for him. Poets, with voices of melody, sing for Freedom. Who could tune for Slavery? They who make the permanent opinion of the country, who mould our youth, whose words, dropped into the soul, are the germs of character, supplicate for the Slave. And now, Sir, behold a new and heavenly ally. A woman, inspired by Christian genius, enters the lists, like another Joan of Arc, and with marvellous power sweeps the popular heart. Now melting to tears, and now inspiring to rage, her work everywhere touches the conscience, and makes the Slave-Hunter more hateful. In a brief period, nearly one hundred thousand copies of "Uncle Tom's Cabin" have been already circulated.[1] But this extraordinary and sudden success, surpassing all other instances in the records of literature, cannot be regarded as but the triumph of genius. Better far, it is the testimony of the people, by an unprecedented act, against the Fugitive Slave Bill.

These things I dwell upon as incentives and tokens of an existing public sentiment, rendering this Act practically inoperative, except as a tremendous engine of horror. Sir, the sentiment is just. Even in the lands of Slavery, the slave-trader is loathed as an ignoble character, from whom the countenance is turned away; and can the Slave-Hunter be more regarded, while pursuing his prey in a land of Freedom? In early Europe, in

1 This was the number at the delivery of this speech. But the circulation has gone on indefinitely.

barbarous days, while Slavery prevailed, a Hunting Master — *nachjagender Herr*, as the Germans called him — was held in aversion. Nor was this all. The fugitive was welcomed in the cities, and protected against pursuit. Sometimes vengeance awaited the Hunter. Down to this day, at Revel, now a Russian city, a sword is proudly preserved with which a Hunting Baron was beheaded, who, in violation of the municipal rights of the place, seized a fugitive slave. Hostile to this Act as our public sentiment may be, it exhibits no similar trophy. The State laws of Massachusetts have been violated in the seizure of a fugitive slave; but no sword, like that of Revel, now hangs at Boston.

I have said, Sir, that this sentiment is just. And is it not? Every escape from Slavery necessarily and instinctively awakens the regard of all who love Freedom. The endeavor, though unsuccessful, reveals courage, manhood, character. No story is read with greater interest than that of our own Lafayette, when, aided by a gallant South Carolinian, in defiance of despotic Austrian ordinances, kindred to our Slave Act, he strove to escape from the bondage of Olmütz. Literature pauses with exultation over the struggles of Cervantes, the great Spaniard, while a slave in Algiers, to regain the liberty for which he declared to his companions "we ought to risk life itself, Slavery being the greatest evil that can fall to the lot of man."[1] Science, in all her manifold triumphs, throbs with pride and delight, that Arago, astronomer and philosopher, — devoted republican also, — was rescued from barbarous Slavery to become one of her greatest sons. Religion rejoices serenely, with joy unspeakable, in the final escape of Vin-

[1] Navarrete, Vida de Cervantes, p. 38.

cent de Paul. In the public square of Tunis, exposed to the inspection of traffickers in human flesh, this illustrious Frenchman was subjected to every vileness of treatment, compelled, like a horse, to open his mouth, to show his teeth, to trot, to run, to exhibit his strength in lifting burdens, and then, like a horse, legally sold in market overt. Passing from master to master, after protracted servitude, he achieved his freedom, and, regaining France, commenced that resplendent career of charity by which he is placed among the great names of Christendom. Princes and orators have lavished panegyric upon this fugitive slave, and, in homage to his extraordinary virtues, the Catholic Church has introduced him into the company of Saints.

Less by genius or eminent service than by suffering are the fugitive slaves of our country now commended. For them every sentiment of humanity is aroused.

> "Who could refrain,
> That had a heart to love, and in that heart
> Courage to make his love known?"

Rude and ignorant they may be; but in their very efforts for Freedom they claim kindred with all that is noble in the Past. Romance has no stories of more thrilling interest. Classical antiquity has preserved no examples of adventure and trial more worthy of renown. They are among the heroes of our age. Among them are those whose names will be treasured in the annals of their race. By eloquent voice they have done much to make their wrongs known, and to secure the respect of the world. History will soon lend her avenging pen. Proscribed by you during life, they will proscribe you through all time. Sir, already judgment is beginning. A righteous public sentiment palsies your enactment.

And now, Sir, let us review the field over which we have passed. We have seen that any compromise, finally closing the discussion of Slavery under the Constitution, is tyrannical, absurd, and impotent; that, as Slavery can exist only by virtue of positive law, and as it has no such positive support in the Constitution, it cannot exist within the national jurisdiction; that the Constitution nowhere recognizes property in man, and that, according to its true interpretation, Freedom and not Slavery is national, while Slavery and not Freedom is sectional; that in this spirit the National Government was first organized under Washington, himself an Abolitionist, surrounded by Abolitionists, while the whole country, by its Church, its Colleges, its Literature, and all its best voices, was united against Slavery, and the national flag at that time nowhere within the National Territory covered a single slave; still further, that the National Government is a Government of delegated powers, and, as among these there is no power to support Slavery, this institution cannot be national, nor can Congress in any way legislate in its behalf; and, finally, that the establishment of this principle is the true way of peace and safety for the Republic. Considering next the provision for the surrender of fugitives from service, we have seen that it was not one of the original compromises of the Constitution; that it was introduced tardily and with hesitation, and adopted with little discussion, while then and for a long period thereafter it was regarded with comparative indifference; that the recent Slave Act, though many times unconstitutional, is especially so on two grounds, —*first*, as a usurpation by Congress of powers not granted by the Constitution, and an infraction of rights secured to the

States, and, *secondly*, as the denial of Trial by Jury, in a question of Personal Liberty and a suit at Common Law; that its glaring unconstitutionality finds a prototype in the British Stamp Act, which our fathers refused to obey as unconstitutional on two parallel grounds, — *first*, because it was a usurpation by Parliament of powers not belonging to it under the British Constitution, and an infraction of rights belonging to the Colonies, and, *secondly*, because it was the denial of Trial by Jury in certain cases of property; that, as Liberty is far above property, so is the outrage perpetrated by the American Congress far above that perpetrated by the British Parliament; and, finally, that the Slave Act has not that support, in the public sentiment of the States where it is to be executed, which is the life of all law, and which prudence and the precept of Washington require.

Sir, thus far I have arrayed the objections to this Act, and the false interpretations out of which it has sprung. But I am asked what I offer as a substitute for the legislation which I denounce. Freely I answer. It is to be found in a correct appreciation of the provision of the Constitution under which this discussion occurs. Look at it in the double light of Reason and of Freedom, and we cannot mistake the exact extent of its requirements. Here is the provision: —

"No person held to service or labor in one State, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due."

From the very language employed, it is obvious that this is merely a *compact* between the States, with a *pro-*

hibition on the States, *conferring no power on the Nation.* In its natural signification it is a compact. According to examples of other countries, and principles of jurisprudence, it is a compact. Arrangements for extradition of fugitives have been customarily compacts. Except under express obligations of treaty, no nation is bound to surrender fugitives. Especially has this been the case with fugitives for Freedom. In mediæval Europe cities refused to recognize this obligation in favor of persons even under the same National Government. In 1531, while the Netherlands and Spain were united under Charles the Fifth, the Supreme Council of Mechlin rejected an application from Spain for the surrender of a fugitive slave. By express compact alone could this be secured. But the provision of the Constitution was borrowed from the Ordinance of the Northwestern Territory,[1] which is expressly declared to be a compact; and this Ordinance, finally drawn by Nathan Dane, was itself borrowed, in distinctive feature, from the early institutions of Massachusetts, among which, as far back as 1643, was a compact of like nature with other New England States.[2] Thus this provision is a compact

[1] "ART. VI. There shall be neither slavery nor involuntary servitude in the said Territory, otherwise than in the punishment of crimes whereof the party shall have been duly convicted: Provided always, that any person escaping into the same, from whom labor or service is lawfully claimed in any one of the original States, such fugitive may be lawfully reclaimed, and conveyed to the person claiming his or her labor or service as aforesaid." — *Ordinance for the Government of the Territory Northwest of the River Ohio*, July 13, 1787: Journals of Congress, Vol. XII. pp. 92, 93.

[2] "8. . . . . It is also agreed, that if any servant run away from his master into any of the confederate jurisdictions, that in such case (upon certificate from one magistrate in the jurisdiction out of which the said servant fled, or upon other due proof) the said servant shall be either delivered to his master or any other that pursues and brings such certificate and proof." — *Articles of Confederation between the Plantations*, etc., May 29, 1643: Hubbard's History of New England, p. 472.

in language, in nature, in its whole history; as we have already seen, it is a compact according to the intentions of our fathers and the genius of our institutions.

As a compact, its execution depends absolutely upon the States, without any intervention of the Nation. *Each State, in the exercise of its own judgment, will determine for itself the precise extent of obligation assumed.* As a compact in derogation of Freedom, it must be construed strictly in every respect, leaning always in favor of Freedom, and shunning any meaning, not clearly necessary, which takes away important personal rights; mindful that the parties to whom it is applicable are regarded as "persons," of course with all the rights of "persons," under the Constitution; especially mindful of the vigorous maxim of the Common Law, early announced by Fortescue, that "he is to be adjudged impious and cruel who does not favor Liberty"[1]; and also

[1] De Laudibus Legum Angliæ, Cap. XLII.; Coke upon Littleton, 124 *b*. Granville Sharp, in the remarkable testimony already cited (*ante*, p. 108), quotes Fortescue thus: "For in behalf of Liberty human nature always implores: because *Slavery is introduced by man*, and *for vice;* but *Liberty* is implanted *by God* in the very nature of *man:* wherefore, when stolen by man, it always earnestly longs to return; as does everything which is deprived of *natural liberty*. For which reason the *man* who does *not favor Liberty* is to be adjudged *impious* and *cruel*. The laws of England acknowledging these principles give favor to *Liberty in every case*." After this extract from Fortescue, we are reminded that "Slavery is properly declared by one of our oldest English authorities in law, Fleta, to be *contrary to Nature* (Fleta, 2d edit. p. 1), which expression of Fleta is really a maxim of the Civil or Roman Law"; and then Sharp predicts the time when "our deluded statesmen, lawyers, commercial politicians, and planters shall be compelled to understand that a more forcible expression of illegality and iniquity could not have been used than that by which Slavery is defined in the Roman code, as well as by our English Fleta, *i. e.* that it is *contra naturam*, against Nature; for, consequently, it must be utterly illegal, a crime which by the first foundation of English law is justly deemed both *impious* and *cruel*"; and he adds, "The severity of these expressions cannot be restrained without injustice to the high authorities on which this argument is founded." (Letter to the Maryland Society for Promoting the Abolition of Slavery, etc.,

completely adopting, in letter and spirit, as becomes a just people, the rule of the great Commentator, that "the law is always ready to catch at anything in favor of Liberty."[1] With this key the true interpretation is natural and easy.

Briefly, the States are prohibited from any "law or regulation" by which any "person" escaped from "service or labor" may be discharged therefrom, and on establishment of the claim to such "service or labor" he is to be "delivered up." But the mode by which the claim shall be tried and determined is not specified. All this is obviously within the control of each State. It may be by virtue of express legislation; in which event, any Legislature, justly careful of Personal Liberty, would surround the fugitive with every shield of Law and Constitution. But here a fact pregnant with Freedom must be studiously observed. The name *Slave* — that litany of wrong and woe — does not appear in the clause. Here is no unambiguous phrase, incapable of a double sense, — no "positive" language, applicable only to slaves, and excluding all other classes, — no word of that absolute certainty in every particular which forbids any interpretation except that of Slavery, and makes it impossible "to catch at anything in favor of Liberty." Nothing of this kind is here. But, passing from this, — "impiously and cruelly" renouncing for the moment all leanings for Freedom, — refusing "to catch at anything

pp. 6 – 8.) This testimony of the great English Abolitionist is reinforced, especially with regard to fugitive slaves, when we consider its publication in 1793 by the Abolition Society of Maryland, with the prefatory observation, that, "in the case of slaves escaping from their masters, the friends of universal liberty are often embarrassed in their conduct by a conflict between their principles and *the obligations imposed by unwise and perhaps unconstitutional laws.*"

[1] Blackstone, Commentaries, Vol. II. p. 94.

in favor of Liberty," — abandoning the cherished idea of the Fathers, that it was "*wrong* to admit in the Constitution the idea that there could be property in men," — and, in the face of these commanding principles, assuming two things, — first, that, in the evasive language of this clause, the Convention, whatever may have been the aim of individual members, really intended fugitive slaves, which is sometimes questioned, and, secondly, that, if they so intended, the language employed can be judicially regarded as justly applicable to fugitive slaves, which is often and earnestly denied, — then the whole proceeding, without any express legislation, may be left to ancient and authentic forms of the Common Law, familiar to the framers of the Constitution, and ample for the occasion. If the fugitive be seized without process, he will be entitled at once to his writ *de Homine Replegiando*, while the master, resorting to process, may find his remedy in the writ *de Nativo Habendo*, each requiring trial by jury. If, from ignorance or lack of employment, these processes have slumbered in our country, still they belong to the great arsenal of the Common Law, and continue, like other ancient writs, *tanquam gladius in vagina*, ready to be employed at the first necessity. They belong to the safeguards of the citizen. But in any event, and in either alternative, the proceeding would be by "suit at Common Law," with Trial by Jury; and it would be the solemn duty of the court, according to all the forms and proper delays of the Common Law, to try the case on the evidence, strictly to apply all protecting rules of evidence, and especially to require stringent proof, by competent witnesses under cross-examination, that the person claimed was *held* to service, that his service was *due*

to the claimant, that he had *escaped* from the State where such service was due, and also proof of the *laws* of the State under which he was held. *Still further, to the Courts of each State must belong the determination of the question, to what class of persons, according to just rules of interpretation, the phrase "person held to service or labor" is strictly applicable.*

Such is this much debated provision. The Slave States, at the formation of the Constitution, did not propose, as in cases of Naturalization and Bankruptcy, to empower the National Government *to establish an uniform rule* for the rendition of fugitives from service, *throughout the United States;* they did not ask the National Government to charge itself in any way with this service; they did not venture to offend the country, and particularly the Northern States, by any such assertion of hateful pretension. They were content, under the sanctions of compact, in leaving it to the public sentiment of the States. There, I insist, it must remain.

Mr. President, I have occupied much time; but the great subject still stretches before us. One other point yet remains, which I must not leave untouched, and which justly belongs to the close. The Slave Act violates the Constitution, and shocks the Public Conscience. With modesty, and yet with firmness, let me add, Sir, it offends against the Divine Law. No such enactment is entitled to support. As the throne of God is above every earthly throne, so are his laws and statutes above all the laws and statutes of man. To question these is to question God himself. But to assume that human laws are beyond question is to claim for their fallible authors infallibility. To assume that they are always

in conformity with the laws of God is presumptuously and impiously to exalt man even to equality with God. Clearly, human laws are not always in such conformity; nor can they ever be beyond question from each individual. Where the conflict is open, as if Congress should command the perpetration of murder, the office of conscience as final arbiter is undisputed. But in every conflict the same queenly office is hers. By no earthly power can she be dethroned. Each person, after anxious examination, without haste, without passion, solemnly for himself must decide this great controversy. Any other rule attributes infallibility to human laws, places them beyond question, and degrades all men to an unthinking, passive obedience.

According to St. Augustine, an unjust law does not appear to be a law: *Lex esse non videtur quæ justa non fuerit.*[1] And the great Fathers of the Church, while adopting these words, declare openly that unjust laws are not binding. Sometimes they are called "iniquity," and not law; sometimes "violences," and not laws.[2] And here again the conscience of each person is final arbiter. But this lofty principle is not confined to the Church. Earlier than the Church, a sublime Heathen announced the same truth. After assailing indignantly that completest folly which would find the rule of justice in human institutions and laws, and then asking if the laws of tyrants are just simply because laws, Cicero

[1] De Libero Arbitrio, Lib. I. c. 5. See Thomas Aquinas, Summa Theologica, 1ma 2dæ, Quæst. XCVI. art. 4; also, Balmez, Protestantism and Catholicity compared in their Effects on the Civilization of Europe, Ch. 53.

[2] *Magis iniquitas quam lex, magis violentiæ quam leges.* Thomas Aquinas, Summa Theol., 1ma 2dæ, Quæst. XC. art. 1, XCVI. art. 4. The supreme duty to God is recognized in a text of St. Basil, *Obediendum est in quibus mandatum Dei non impeditur*, quoted by Filmer, Patriarcha, Ch. III. § 3.

declares, that, if edicts of popular assemblies, decrees of princes, and decisions of judges constitute right, then there may be a right to rob, a right to commit adultery, a right to set up forged wills; whereas he does not hesitate to say that pernicious and pestilent statutes can be no more entitled to the name of law than robber codes; and he concludes, in words as strong as those of St. Augustine, that an unjust law is null.[1] A master of philosophy in early Europe, of intellectual renown, the eloquent Abelard, in Latin verses addressed to his son, clearly expresses the universal injunction:—

"Jussa potestatis terrenæ discutienda:
Cœlestis tibi mox perficienda scias.
Si quis divinis jubeat contraria jussis,
Te contra Dominum pactio nulla trahat."[2]

The mandates of an earthly power are to be discussed; those of Heaven must at once be performed; nor should

[1] De Legibus, Lib. I. capp. 15, 16; Lib. II. capp. 5, 6. The conclusion appears in the dialogue between Cicero and his brother Quintus.

"Marc. Ergo est lex justorum injustorumque distinctio, ad illam antiquissimam et rerum omnium principem expressa naturam. . . . .

"Quint. Præclare intelligo: nec vero jam aliam esse ullam legem puto non modo habendam, sed ne appellandam quidem."

Among moderns, the Abbé de Mably, in an elaborate discussion, adopts the conclusion of Cicero, as well as his treatment of it by dialogue, making his interlocutor, Lord Stanhope, ask, "What other remedy can be applied to this evil than disobedience?" and representing him as "pulverizing without difficulty the miserable commonplaces in opposition." — *Des Droits et des Devoirs du Citoyen*, Lettre IV.: Œuvres (Paris, 1797), Tom. XI. pp. 249, 251.

Cicero was not alone among ancients in submission to an overruling law, nowhere pictured in greater sovereignty than by Sophocles, in a famous verse of the *Œdipus Tyrannus*:—

Μέγας ἐν τούτοις θεός, οὐδὲ γηράσκει. — v. 845 [871].

Great in these laws is God, and grows not old.

[2] Versus ad Astralabium Filium: Opera (ed. Cousin), Tom. I. pp. 341, 342.

we suffer ourselves to be drawn by any compact into opposition to God. Such is the rule of morals. Such, also, by the lips of judges and sages, is the proud declaration of English law, whence our own is derived. In this conviction, patriots have braved unjust commands, and martyrs have died.

And now, Sir, the rule is commended to us. The good citizen, who sees before him the shivering fugitive, guilty of no crime, pursued, hunted down like a beast, while praying for Christian help and deliverance, and then reads the requirements of this Act, is filled with horror. Here is a despotic mandate "to aid and assist in the prompt and efficient execution of this law."[1] Again let me speak frankly. Not rashly would I set myself against any requirement of law. This grave responsibility I would not lightly assume. But here the path of duty is clear. By the Supreme Law, which commands me to do no injustice, by the comprehensive Christian Law of Brotherhood, *by the Constitution, which I have sworn to support,* I AM BOUND TO DISOBEY THIS ACT. Never, in any capacity, can I render voluntary aid in its execution. Pains and penalties I will endure, but this great wrong I will not do. "Where I cannot obey actively, there I am willing to lie down and to suffer what they shall do unto me": such was the exclamation of him to whom we are indebted for the "Pilgrim's Progress," while in prison for disobedience to an earthly statute.[2] Better suffer injustice than do it. Better vic-

[1] Fugitive Slave Act, September 18, 1850, Sec. 5.

[2] Relation of the Imprisonment of Mr. John Bunyan, written by Himself: Works (Glasgow, 1853), Vol. I. pp. 59, 60. Balmez, the Spanish divine, whose vindication of the early Catholic Church is a remarkable monument, declares, after careful discussion, "that the rights of the civil power are limited, that there are things beyond its province, — cases in which a man may

tim than instrument of wrong. Better even the poor slave returned to bondage than the wretched Commissioner.

There is, Sir, an incident of history which suggests a parallel, and affords a lesson of fidelity. Under the triumphant exertions of that Apostolic Jesuit, St. Francis Xavier, large numbers of Japanese, amounting to as many as two hundred thousand, — among them princes, generals, and the flower of the nobility, — were converted to Christianity. Afterwards, amidst the frenzy of civil war, religious persecution arose, and the penalty of death was denounced against all who refused to trample upon the effigy of the Redeemer. This was the Pagan law of

say, and ought to say, *I will not obey.*" (Protestantism and Catholicity Compared, Ch. 54.) Devices to avoid the enforcement of unjust laws illustrate this righteous disobedience, — as where English juries, before the laws had been made humane, found an article stolen to be less than five shillings in value, in order to save the criminal from capital punishment. In the Diary of John Adams, December 14, 1779, at Ferrol, in Spain, there is a curious instance of law requiring that a convicted parricide should be headed up in a hogshead with an adder, a toad, a dog, and a cat, and then cast into the sea; but in a case that had recently occurred the barbarous law was evaded by painting these animals on a hogshead containing the dead body of the criminal. (Works, Vol. III. p. 233.) In similar spirit, the famous President Jeannin, high in the magistracy and diplomacy of France, when called to a consultation on a mandate of Charles the Ninth, at the epoch of St. Bartholomew, said, "We must obey the sovereign slowly, when he commands in anger"; and he concluded by asking "letters patent before executing orders so cruel." (Biographie Universelle, art. *Jeannin* (*Pierre.*) The remark of Casimir Périer, when Prime-Minister, to Queen Hortense, that it might be "legal" for him to arrest her, but not "just," makes the same distinction. (Guizot, Mémoires pour servir à l'Histoire de mon Temps, Tom. II. p. 219. See *ante*, Vol. II. pp. 398, 399.) The case is stated with perfect moderation by Grotius, when he says that human laws have *a binding force* only when they are made in a humane manner, not if they impose a burden which is plainly abhorrent to reason and Nature, — *non si onus injungant quod a ratione et natura plane abhorreat.* (De Jure Belli ac Pacis, Lib. III. Cap. XXIII. v. 3; also Lib. I. Cap. IV. vii. 2, 3.) These latter words aptly describe the "burden" imposed by the Slave Act.

a Pagan land. But the delighted historian records, that from the multitude of converts scarcely one was guilty of this apostasy. The law of man was set at nought. Imprisonment, torture, death, were preferred. Thus did this people refuse to trample on the painted image. Sir, multitudes among us will not be less steadfast in refusing to trample on the living image of their Redeemer.

Finally, Sir, for the sake of peace and tranquillity, cease to shock the Public Conscience; for the sake of the Constitution, cease to exercise a power nowhere granted, and which violates inviolable rights expressly secured. Leave this question where it was left by our fathers, at the formation of our National Government, — in the absolute control of the States, the appointed guardians of Personal Liberty. Repeal this enactment. Let its terrors no longer rage through the land. Mindful of the lowly whom it pursues, mindful of the good men perplexed by its requirements, in the name of Charity, in the name of the Constitution, repeal this enactment, totally and without delay. There is the example of Washington; follow it. There also are words of Oriental piety, most touching and full of warning, which speak to all mankind, and now especially to us: "Beware of the groans of wounded souls, since the inward sore will at length break out. Oppress not to the utmost a single heart; for a solitary sigh has power to overturn a whole world."

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